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RANSLEY

THE Attorney's Practice IN THE Court of King's Bench: OR, AN INTRODUCTION TO THE

KNOWLEDGE of the PRACTICE of that Court, as it now ſtands under the Regulation of ſeveral late ACTS of PARLIAMENT, RULES, and DETERMINATIONS of the ſaid COURT;

WITH

Variety of uſeful and curious PRECEDENTS in *Engliſh*, ſettled or drawn by Counſel; and a Complete INDEX to the Whole.

By ROBERT RICHARDSON, of the *Inner Temple*, Gent.

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In TWO VOLUMES.

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For E. BROOKE, E. JOHNSTON, P. URIEL, W. OWEN, and W. FLEXNEY.



THE Attorney's Practice IN THE Court of King's Bench.

Abatement.

AND the ſaid *T. T.* by *A. B.* his attorney, comes and defends the force and injury, when, *&c.* and prays judgment of the ſaid bill, becauſe he ſays, that on the tenth day of *April* in the year of our Lord 1695, in the ſaid bill mentioned, one *T. S.* together with the ſaid *T. T.* was warden and receiver of the money, and had the care and adminiſtration of the goods and chattels of the ſaid church for the time aforeſaid, and that the ſaid *T. S.* is ſtill in being and alive, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid; *Without this*, that the ſaid *T. T.* was warden and receiver of

Plea in abatement, that there was another churchwarden not named in the bill.

Traverſe.

of the money, and had alone the care and adminiſtration of the goods and chattels of the ſaid church by the time aforeſaid, as the ſaid *N.* and *T.* in their ſaid bill have above declared; and this he is ready to verify: Wherefore, for that the ſaid *T. S.* is not named in the ſaid bill, the ſaid *T. T.* prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Demurrer.

And the ſaid *N.* and *T.* ſay, that by any thing by the ſaid *T. T.* above by pleading alledged the ſaid bill of the ſaid *N.* and *T.* ought not to be quaſhed, becauſe they ſay, that the ſaid plea by the ſaid *T. T.* for quaſhing the ſaid bill above pleaded, and the matter therein contained, are not ſufficient in law to quaſh the ſaid bill of the ſaid *N.* and *T.* or to bar them the ſaid *N.* and *T.* from maintaining their ſaid action againſt the ſaid *T. T.* and this they are ready to verify: Wherefore for default of a ſufficient plea in this behalf the ſaid *N.* and *T.* pray judgment, and that their ſaid bill may be adjudged good, and that the ſaid *T. T.* may anſwer to the ſaid bill, *&c.* And for cauſes of demurring in law to the ſaid plea, according to the form of the ſtatute in ſuch caſe made and provided, they ſhew, and to the court here demonſtrate, theſe cauſes following, to wit, for that the ſaid plea is incertain, and contains in itſelf a negative pregnant; and becauſe the ſaid *T. T.* by the ſaid plea has made full defence, and traverſes a matter not traverſable, and it wants form, *&c.*

Cauſes of demurrer.

W. Thomſon.

* *And*

* *And* the ſaid *E.* by *T. S.* his attorney comes and defends the force and injury, *&c.* and ſays that the ſaid *E.* ought not to be anſwered to his ſaid bill, becauſe he ſays, that the ſaid *E.* is an alien born at *Calais* in the kingdom of *France*, in parts beyond the ſeas, under the ligeance of *Louis* king of *France*, an enemy of our ſaid lord the now king of *England*, born of father and mother, enemies of our ſaid lord the king; and adhering to his ſaid enemies, and come into the kingdom of *England* without the ſafe conduct of our ſaid lord the king; and this he is ready to verify: Wherefore he prays judgment if the ſaid *E.* ought to be anſwered to his ſaid bill, *&c.*

William Hall.

Plea that the plaintiff is an alien enemy. B. R.

Lill. Ent. 1. 7 Co. 2. 4 Rep. 55. Salk. 2, 46, 116. Pract. Reg. 8. Raſt. 252, 605. Vet. int. 49. Finch 28. Yelv. 148. Aſht. 11. Davis 38. Theol. 7, 8, 10. Carth. 265, 302. Andr. 76.

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* Plea in abatement, that the plaintiff is an alien enemy, *&c.* Replication, that he was *a native* born at *Weſtminſter*; *and this he is ready to verify.* Demurrer, for that the plaintiff ought to have concluded his replication to the country; and of that opinion was *Holt* ch. juſt. becauſe every plea concerning the perſon pleaded in abatement is triable where the action is brought; but where ſuch a plea is pleaded in bar of the action, the *venue* ſhall be alledged, and it ſhall conclude with an averment, becauſe ſuch a plea is not to the perſon, but pleaded to the right. Judgment for the plaintiff on another point. *Eaſter* 2 *Annæ*, *B. R. Weſt* v. *Sutton*, 2 *R. Raym.* 853. *Salk.* 2. Vide 6 *Mod.* 57, 91.

Plea, miſnomer the ſtile of the plaintiffs a corporation. B. R. Lilly's Ent. 4.

And the ſaid *B.* by *N. H.* his attorney, comes and defends the force and injury, *&c.* and prays judgment of the ſaid bill, becauſe he ſays, that the ſaid plaintiffs are named and called the Maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers of the city of *London*, and by that name and title have been always named and called; *Without* this, that they are named and called the maſter and keepers or wardens and commonalty of the myſtery and art of ſtationers of the city of *London* aforeſaid, as by the ſaid bill is above ſuppoſed; and this he is ready to verify: wherefore he prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed.

Traverſe. Salk. 8. Pract. Reg. 199.

Demurrer thereto.

And the ſaid maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers of the city of *London* ſay, that by any thing by the ſaid *B.* above by pleading alledged, the bill of the ſaid maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers of the city of *London* ought not to be quaſhed, becauſe they ſay, that the ſaid plea by the ſaid *B.* in manner and form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to quaſh the bill of the ſaid maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers of the city of *London*, to which ſaid plea they the ſaid maſter and keepers or wardens and commonalty of

of the myſtery or art of ſtationers of the city of *London* have no need, nor are they bound by the law of the land in any manner to anſwer; and this they are ready to verify: Wherefore for default of a ſufficient plea in this behalf, they the ſaid maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers of the city of *London* pray judgment, and that the ſaid bill of the ſaid maſter, keepers or wardens and commonalty of ſtationers of the city of *London* may be adjudged as good, and that the ſaid *B.* may anſwer to the bill, *&c.*

And the ſaid *B.* ſays, that the ſaid plea by the ſaid *B.* in manner and form aforeſaid above pleaded, and the matter therein contained, are good and ſufficient in law to quaſh the ſaid bill of the ſaid maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers of the city of *London*, which ſaid plea, and the matter therein contained, he the ſaid *B.* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers, of the city of *London*, do not anſwer to that plea, nor as yet have any ways denied it, he the ſaid *B.* as before prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.* *But* becauſe the court of our ſaid lady the queen now here is not yet adviſed about giving their judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lady the queen at *Weſtminſter*, Joinder.

Continuance. Salk. 707, 776.

ſter, until *Saturday* next after the octave of the purification of the Bleſſed Virgin *Mary*, to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lady the queen now here is not yet adviſed thereof. *At which* day before our lady the queen at *Weſtminſter* came as well the ſaid maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers of the city of *London*, as the ſaid *B.* by their attornies aforeſaid: upon which, all and ſingular the premiſſes being ſeen, and by the court of our ſaid lady the now queen here fully underſtood, and mature deliberation being thereupon had; for that it ſeems to the court of our ſaid lady the now queen here, that the ſaid plea by the ſaid *B.* in manner and form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to quaſh the ſaid bill of the ſaid maſter and keepers or wardens and commonalty of the myſtery or art of ſtationers of the city of *London:* therefore it is conſidered that the ſaid *B.* anſwer further to the ſaid bill, *&c.* *And* upon this the ſaid *B.* by his ſaid attorney comes and defends the force and injury, when, *&c.* And prays oyer of the ſaid writing; and it is read to him, *&c.* *And pleads* in bar.

Judgment reſpondeas ouſter. Pract. Reg. 1.

Defendant craves oyer, and pleads.

Upon which the ſaid *J. D.* ſaving to himſelf all and all manner of advantages, exceptions and allegations of the ſaid plea of the ſaid *J. S. S. A. T. B. R. B. J. L. and R. H.* prays leave to imparle before our lord the king and lady

Special imparlance after a plea.

lady the queen at *Weſtminſter*, until *Wedneſday* next after fifteen days of *St. Hilary*; and has it, *&c.* The ſame day is given to the ſaid parties at the ſame place, *&c.* *At which* day before our ſaid lord the king and lady the queen, *&c.* at *Weſtminſter* comes as well the ſaid *J. D.* as the ſaid *J. S. &c* by their attornies aforeſaid: upon which the ſaid *J. D.* ſaving to himſelf as aforeſaid, prays further leave to imparle thereupon, *&c.* before our ſaid lord the king and lady the queen at *Weſtminſter*, until *Tueſday* next after the purification of the Bleſſed Virgin *Mary*; and has it, *&c.* The ſame day is given to the ſaid parties at the ſame place, *&c.* At which day before our ſaid lord the king and lady the queen at *Weſtminſter* comes as well the ſaid *J. D.* as the ſaid *J. S. &c.* by their attornies aforeſaid. *And* the ſaid *J. D.* ſays, that after the laſt continuance of the ſaid plea, to wit, after the ſaid *Wedneſday* next after the morrow of the purification of the Bleſſed Virgin *Mary*, from which day the ſaid plea was continued unto this day, to wit, *Tueſday* next after the octave of the purification of the Bleſſed *Mary*, to wit, on the tenth day of *February* in the year of our Lord 1689, the ſaid *J. D.* was and now is abſolved and releaſed from the ſentence of excommunication aforeſaid, and reſtored to the chriſtian communion and the ſacraments of the church; *And* the ſaid *J. D.* brings here into court the letters patent of *G. O.* doctor of laws, principal official of the court of *Canterbury* lawfully ap-

Imparlance continued.

Replication, that after the laſt continuance the plaintiff obtained letters of abſolution. B. R. Lill. Ent. 9.

Profert of the letters of abſolution.

pointed, teſtifying the ſaid abſolution: which ſaid letters patent follow in theſe words, to wit, *G. O.* doctor of laws, *&c.* [the letters of abſolution ſet forth at large.]

Plea, miſnomer in the defendant's chriſtian name. B. R. Lill. Ent. 6.

Traverſe. Salk. 6, 712. Pract. Reg. 199.

And C. S. againſt whom the ſaid *R. G.* by his bill exhibited complains by the name of *C. S.* by *J. J.* his attorney, comes and defends the force and injury, *&c.* and prays judgment of the ſaid bill, becauſe he ſays, that he was baptized by the name of *C.* and by that name from the time of his baptiſm hitherto has been always known and named by the name of *C. Without this*, that he the ſaid *C.* now is or ever was known or named by the name of *C.* as by the ſaid bill is above ſuppoſed; and this he is ready to verify: wherefore he prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

B. R. Miſnomer in the defendant's ſurname. Lill. Ent. 1.

Pract. Reg. 5. 4 Mod. 347. 10 Co. 122, 11 Co. 21, Salk. 18.

And upon this *R. A.* by *J. L.* his attorney, comes and defends the force and injury, *&c.* and prays judgment of the ſaid bill, becauſe he ſays, that he is the ſame perſon againſt whom the ſaid *T. H.* exhibited the ſaid bill by the name of *R. A.* and that he is named and called by the name of *R. A.* and by that name from the time of his nativity was always called and known: *without* this, that he is called by the name of *R. A.* or has been called and known by that name; and this he is ready to verify: wherefore he prays judgment

judgment of the ſaid bill, and that the ſaid bill may be quaſhed, &c.

And W. G. eſq; againſt whom the ſaid *T.* by his bill exhibited complains by the name of *W. G.* comes in his proper perſon and defends the force and injury, &c. and prays judgment of the ſaid bill, becauſe he ſays, that he on the day of exhibiting the ſaid bill of the ſaid *T.* and always before was, and yet is an eſquire; and this he is ready to verify: wherefore for that the ſaid *W.* in the ſaid bill of the ſaid *T.* is not named and impleaded by the name of *W. G.* eſq; as according to the form of the ſtatute of additions, in the names of defendants in ſuch bills filed, made and provided, he ought to be named and impleaded, the ſaid *W.* prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, &c.

Plea, that the defendant is an eſquire, and ought to be impleaded by that name.
B. R.
Lill. Ent. 6.
Stat. 1 H. 5.
Raſt. 108, 298.
2 Keb. 824.
1 Ventr. 151.
Salk. 7, 50, 5.

And the ſaid *H. L.* by *R. S.* his attorney, comes and prays judgment of the ſaid bill, becauſe he ſays, that he the ſaid *H.* long before the exhibiting the ſaid bill, and alſo on the day of exhibiting the ſame, was and now is a doctor of phyſic in due manner made by the univerſity of *Oxford*, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid: wherefore, for that he the ſaid *H.* is not named doctor of phyſic in the ſaid bill, he prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, &c.

Plea, that the defendant is a doctor of phyſic.
Lill. Ent. 2.
4 Mod. 47.

And

Plea, infancy by guardian. B. R. Lill. Ent. 3.

Pract. Reg. 51, 655.

And the ſaid *A.* who is under the age of † one and twenty years, by *R. C.* her guardian, ſpecially admitted by the court of our ſaid lady the now queen here, comes and defends the force and injury, *&c.* and prays judgment of the ſaid bill, becauſe ſhe ſays, that ſhe the ſaid *A.* on the day of exhibiting the ſaid bill, was and ſtill is under the age of one and twenty years, that is to ſay, of the age of nineteen years, and not more, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid; and that the ſaid *H.* proſecuted her ſaid bill againſt the ſaid *A.* neither by her next friend, nor by her guardian; and this ſhe is ready to verify: Wherefore ſhe prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Plea, that defendant is adminiſtrator, and not executor. B. R. Lill. Ent. 5.

* *And* the ſaid *R.* by *J. L.* his attorney, comes and defends the force and injury, *&c.* and

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† In *debitatus aſſumpſit* infancy may be given in evidence on *non aſſumpſit*. *Darby* v. *Boucher*, *Salk.* 279. 2 *Lev.* 144. *Salk.* 386. 5 *Mod.* 368. *Aliter* in debt on a bond, he muſt plead infancy. *Salk.* 279.

* Debt on a bond againſt *C.* as executrix to *J. S.* Plea, that *J. S.* died inteſtate, and that adminiſtration was granted to the defendant of the goods, *&c.* of *J. S.* and therefore *prays judgment whether ſhe ought to anſwer the aforeſaid bill.* Demurrer. Firſt exception: If the defendant adminiſtered the goods of *J. S.* before adminiſtration granted to her, ſhe is chargeable as executrix *of her own wrong*, therefore ſhe ought to have traverſed

and ſays, that the ſaid *J. H.* on the firſt day of *December* in the year of our Lord 1694. at *London* aforeſaid, in the pariſh and ward aforeſaid, died inteſtate, after whoſe death, to wit, on the eight day of the month of *February* in the year of our Lord 1694, at *London* aforeſaid, in the pariſh and ward aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid *J. H.* at the time of his death, was in due form of law committed to the ſaid *R. H.* by Sir *C. H.* knt. doctor of laws, commiſſary and ſequeſtrator general, lawfully appointed, of the reverend father in Chriſt *H.* by divine permiſſion, lord biſhop of *London*, in the parts of *Eſſex* and *Hertford*, to whom the commiſſion of the adminiſtration of the right appertained: In which

Salk. 296. 3. Pract. Reg. 7.

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traverſed that ſhe meddled before as executrix. Anſwer. 3 *Leon.* 197. and *Cro. Car.* 102. are expreſs, that the plaintiff ought to reply that ſpecial matter. Of which opinion was the whole court. *Holt* ch. juſt. If the defendant had taken ſuch traverſe, it had made her plea vitious. Second exception: The concluſion of the plea is not in abatement. Anſwer, cited *Placit. general' et ſpecial'*; tit. *Abatement* 20, 21. But the court denied theſe caſes, and ſaid, that in the preſent caſe it is a proper concluſion to the juriſdiction, which is ſometimes alſo, *whether the court will take cognizance*; but it cannot be good in abatement. Judgment, *that anſwer over*. A concluſion in abatement ought to pray judgment, *that the bill be quaſhed*. *Mich.* 7 *W.* 3. *B. R. Powers* v. *Cock.* 1 *R. Raym.* 63. 1 *Salk.* 298. 5 *Mod.* 136. *Carth.* 363. 3 *Danv. Abr.* 414. *p.* 23. Same judgment on the laſt point the ſame term, *Nichols* v. *Shepherd*, *Skin.* 620.

caſe

caſe the ſaid *E.* and *M.* ought to have named the ſaid *R. H.* adminiſtrator of the goods and chattels which were of the ſaid *J. H.* and not executor of the teſtament of the ſaid *J. H.* and this he is ready to verify: Wherefore he prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Plea by a feme, that ſhe is married. B. R. Lill. Ent. 1. 2 Str. 811. 2 Ld. Raym. 1525. Barnard. K. B. 70. Pract. Reg. 8. Salk. 7, 8. 6 Mod. 230.

And the ſaid *S.* in her proper perſon comes and prays judgment of the ſaid bill of the ſaid *W.* becauſe ſhe ſays, that ſhe the ſaid *S.* at the time of the exhibiting the ſaid bill of the ſaid *W.* againſt the ſaid *S.* was married to one *J. W.* then and yet her huſband, and alive, to wit, at *Iſlington* aforeſaid in the county aforeſaid; and this the ſaid *S.* is ready to verify: Wherefore for that the ſaid *J. W.* is not named in the ſaid bill, the ſaid *S.* prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Replication,

And the ſaid *W.* ſays, that by any thing by the ſaid *S.* above by pleading alledged the ſaid bill of the ſaid *W.* now filed ought not to be quaſhed, becauſe he ſays, that the ſaid *S.* on the ſaid time of exhibiting the ſaid bill, to wit, on the twenty-third day of *October* in the tenth year of the reign of our ſaid lord the now king, to wit, at *Iſlington* aforeſaid in the county aforeſaid, was ſole; *Without* this, that the ſaid *S.* on the ſaid time of exhibiting the ſaid bill of the ſaid *W.* or at any time afterwards, was married to the ſaid *J. W.* in manner and form as the ſaid *S.* above by pleading has alledged; and this he is ready to verify:

Traverſe.

rify: Wherefore he prays judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, &c.

And the ſaid *S.* as before ſays, that ſhe the ſaid *S.* at the time of exhibiting the ſaid bill of the ſaid *W.* was married to the ſaid *J. W.* her huſband in manner and form as the ſaid *S.* above by pleading has alledged; and of this ſhe puts herſelf upon the country; and the ſaid *W.* does ſo likewiſe, &c. Therefore let a jury, &c. Rejoinder. Iſſue.

BE it remembered, that on *Wedneſday* next after fifteen days of *Eaſter* in this ſame term, Sir *J. H.* knt. chief juſtice of our lord the king, and lady the queen, aſſigned to hold pleas in the court of our ſaid lord the king and lady the queen, before the ſaid king and queen, freely gave and granted to *J. W.* eſq; the office of filacer in the court of the ſaid king and queen, before the ſaid king and queen, for the county of *Salop*, and then and there admitted the ſaid *J. W.* to the ſaid office of filacer for the county aforeſaid to have and to hold to him as his freehold for term of his life, according to the cuſtom of the ſaid court of our ſaid lord the king and lady the queen at all times paſt uſed and approved, and inſtantly put and ſet the ſaid *J. W.* (he having firſt taken as well the oath of allegiance to our ſaid lord the king and lady the queen, according to the form of the ſtatute in Grant of the office of filacer in B. R. Lill. Ent. 6.

in that caſe made and provided, as the oath, according as cuſtom, to behave himſelf well and faithfully in the ſaid office) into the corporal poſſeſſion of the ſaid office, to hold, occupy, and have the ſame in form aforeſaid, with the fees, wages and profits to the ſaid office belonging, and anciently due and accuſtomed, *&c.*

Roll 213. *Holt* and *Ventris*.

Plea, that defendant is filacer of B. R. and ſuable by bill only.

Salk. 1, 2, 3, 8.

And the ſaid *J.* in his proper perſon comes and defends the force and injury, and ſays, that in *Eaſter* term in the fifth year of the reign of their late majeſties *William* and *Mary*, late king and queen of *England*, *&c.* to wit, on *Wedneſday* next after fifteen days of *Eaſter* in that ſame term, Sir *J. H.* then chief juſtice of the ſaid late king and queen, aſſigned to hold pleas in the court of the ſaid late king and queen, before the ſaid late king and queen, freely gave and granted to the ſaid *J. W.* the office of filacer in the court of the ſaid late king and queen, before the ſaid late king and queen, for the county of *Salop*, and then and there admitted the ſaid *J. W.* to the ſaid office of filacer for the ſaid county of *Salop*, to have and to hold to him as his freehold for term of his life, according to the cuſtom of the ſaid court of the ſaid late king and queen at all times paſt uſed and approved, and inſtantly put and ſet the ſaid *J. W.* (he having firſt taken as well

well the oath of allegiance to the ſaid late king and queen, according to the form of the ſtatute in that caſe made and provided, as the oath, according to cuſtom, to behave himſelf well and faithfully in the ſaid office) in the corporal poſſeſſion, to hold, occupy, and have the ſaid office in form aforeſaid, with all fees, wages and profits to the ſaid office belonging, and anciently due and accuſtomed, &c. as by the record of the ſaid grant and admiſſion now remaining in the court of our lord the now king before the king himſelf manifeſtly appears. By virtue of which ſaid grant and admiſſion he the ſaid *J.* was filacer of the ſaid court of the ſaid late king and queen, before the ſaid late king and queen, and on the day of ſuing out the original writ aforeſaid, was and ſtill is a filacer of the ſaid court of our ſaid lord the king before the king himſelf as aforeſaid: and the ſaid *J.* further ſays, that from the time to the contrary whereof the memory of man is not, ſuch filacers of the ſaid court of our ſaid lord the king here, according to the cuſtom of the ſaid court for the whole time aforeſaid hitherto uſed and approved in the ſame court, have been uſed, and ought, in all perſonal pleas at the ſuit of any ſubject of our ſaid lord the king and his predeceſſors, kings and queens of this kingdom, to be impleaded only by bill exhibited in the court of our ſaid lord the preſent king before the king himſelf, againſt ſuch filacers preſent in the ſame court in proper perſon; and this he is ready to verify: Wherefore he prays judgment;

Copy of the record to be annexed to this plea, affidavit not neceſſary.

judgment; if the court of our lord the king here will or ought to take further cognizance of the ſaid plea againſt him the ſaid *J.* &c.

Ed. Whitaker.

Plea, that defendant is an attorney of C. B. and ſuable there only. B. R. Lill. Ent. 3.

And the ſaid *J.* in his proper perſon comes and ſays that he is, and on the day of the exhibiting the ſaid bill of the ſaid *T.* and for divers years before, was one of the attornies of the court of our lady the queen of the Common Bench, imployed, attending in his ſaid office at *Weſtminſter* in the county of *Middleſex*, in proſecuting and defending divers affairs of ſeveral ſubjects of our ſaid lady the queen in that bench as their attorney; and that he the ſaid *J.* and all other attornies of that bench, while they ſo proſecute or defend any ſuch affairs, according to the cuſtom in the ſame court of the bench at *Weſtminſter*, hitherto uſed and approved, ought not to be drawn or compelled, nor at any times paſt have been accuſtomed to be drawn or compelled to anſwer before any juſtices or miniſters of our lady the queen, or other ſecular juſtices whatſoever, except before the juſtices of our ſaid lady the queen of the Common Bench at *Weſtminſter*, upon any pleas, plaints or demands, which touch not the perſon of our ſaid lady the queen, (plea of frank-tenement, felonies and appeals only excepted); and this he is ready to verify: Wherefore he does

1 Lev. 54. Salk. 1, 2, 30, 4, 8, 545. Pract. Reg. 4, 5, 7.

does not intend that the court of our lady the queen here will or ought to take cognizance of the ſaid plea againſt him, &c.

St. John Broderick.

And the ſaid *T. C.* by *J. L.* his attorney, comes and defends the force and injury, &c. and prays oyer of the ſaid writing obligatory; and it is read to him in theſe words, to wit, Know all men by theſe preſents, &c. which being read and heard, the ſaid *T. C.* prays judgment * *of the ſaid declaration*, becauſe he ſays, that at the ſaid time of the ſealing and delivering of the ſaid writing obligatory, upon which the ſaid plaintiff complains againſt him the ſaid *T. C.* to wit, upon the ſaid third day of *May* in the eleventh year of the reign, &c. in the ſaid declaration above mentioned, at *Lewes* aforeſaid in the county aforeſaid, the ſaid *E. F.* and *G. H.* in the ſaid writing obligatory named, alſo ſealed and delivered the ſaid writing obligatory as the act and deed of the ſaid *E. F.* and *G. H.* to the ſaid

Plea that others who are not named in the declaration, jointly executed the bond with the defendant. Lill. Ent. 2.

* Plea of the ſame matter, and in the ſame manner. Demurrer. Judgment for the plaintiff, becauſe this matter was pleaded in bar; whereas it is only a plea in abatement; for a plea which begins with a *prays judgment of the declaration*, and concludes *that the declaration be quaſhed*, is a plea in bar in the *King's Bench*, and has been often ſo adjudged. *Hil.* 13 *Geo.* 1. *B. R. Watts et ux.* v. *Goodman*, 2 *R. Raym.* 1460; *et vide* 2 *R. Raym.* 1205.

plaintiff, and by the ſaid writing obligatory became firmly bound to the ſaid plaintiff with the ſaid defendant in the ſaid one hundred pounds: Which ſaid *E. F.* and *G. H.* are yet in being and alive, to wit, at *Lewes* aforeſaid in the county aforeſaid; and this he is ready to verify: Wherefore for that the ſaid *E. F.* and *G. H.* are not named defendants, together with the ſaid defendant in the ſaid declaration mentioned, the ſaid defendant prays judgment *of the ſaid declaration, and that the ſaid declaration may be quaſhed*, &c.

Plea that another jointly with defendant executed the deed, and jointly covenanted. B. R. Lill. Ent. 7.

And the ſaid *T. D.* by *J. L.* his attorney, comes and defends the force and injury, *&c.* and prays judgment of the ſaid bill, becauſe he ſays, that one *P. A.* on the ſaid 26th day of *Auguſt* in the year of our Lord 1699, at *London* aforeſaid, in the pariſh and ward aforeſaid, ſubſcribed, ſealed, and as his deed delivered to the ſaid *J. B.* the ſaid charter-party indented of affreighment in the ſaid bill above mentioned, and that the ſaid *P. A.* and the ſaid *T.* by the ſaid charter-party indented of affreighment, jointly covenanted, granted and agreed to and with the ſaid *J. B.* his executors, adminiſtrators and aſſigns, in manner and form as in the ſaid bill of the ſaid *J.* is above recited: Wherefore for that the ſaid *P. A.* is not named in the ſaid bill, the ſaid *T. D.* prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

And the ſaid *T.* in his proper perſon comes and defends the force and injury, *&c.* and prays judgment of the ſaid bill, becauſe he ſays, that the ſaid *J.* in the court of our ſaid lady the now queen here, heretofore, to wit, in *Eaſter* term laſt paſt brought his writ againſt the ſaid *T.* of the plea aforeſaid; and thereupon the ſaid *J.* by declaring againſt the ſaid *T.* by the name of *T. I.* late of *London*, gent. then and there appearing at the ſuit of the ſaid *J.* of the plea aforeſaid, complained, That whereas the ſaid *J. M.* on the firſt day of *April* in the year of our Lord 1701, at *London* in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was poſſeſſed of divers goods and chattels, to wit, of two butts of brandy of the value of 150*l.* as of his own proper goods and chattels; and being ſo poſſeſſed thereof caſually loſt the ſaid goods and chattels out of his hands and poſſeſſion; which ſaid goods and chattels afterwards, to wit, on the ſaid firſt day of *April* in the ſaid year of our Lord 1701, aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, came by finding to the hands and poſſeſſion of the ſaid *T.* yet the ſaid *T.* knowing the ſaid goods and chattels to be the proper goods and chattels of the ſaid *J. M.* and to him the ſaid *J. M.* of right to belong and appertain, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *J. M.* of thoſe goods and chattels, did not deliver the ſaid goods and chattels to the ſaid *J. M.* although

Plea, another action pending for the ſame matter in the ſame court. B. R. Lill. Ent. 2. Salk. 8, 715. Prac. Reg. 7. 5 Rep. 51. Meacock v. Farmer cited. 1 R. Raym. 117. Recital of declaration in trover.

though often required; but afterwards, to wit, on the tenth day of *November* in the year of our Lord 1701, aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, converted and diſpoſed the ſaid goods and chattels to his own proper uſe, to the damage of the ſaid *J. M.* of one hundred and twenty pounds; and thereupon he then brought ſuit, *&c.* And the ſaid *T. I.* by *A. B.* his attorney, came and defended the force and injury, when, *&c.* and then prayed leave to imparle thereto here, until on the morrow of the Holy *Trinity* then next following, and had it, *&c.* The ſame day was then given to the ſaid *J. M.* here, *&c.* as by the ſaid record remaining here in court more fully appears: Which ſaid plaint or plea upon the writ aforeſaid, in form aforeſaid proſecuted in the ſaid court of our ſaid lady the now queen here, to wit, at *Weſtminſter* aforeſaid, ſtill depends undiſcuſſed, undetermined, and not diſcontinued: And the ſaid *T.* further ſays, that the ſaid *J. M.* in the ſaid former declaration and plea named, and the ſaid *J. M.* in the ſaid bill now exhibited againſt him the ſaid *T. I.* are one and the ſame perſon, and not other, nor different; and that the ſaid *T. I.* in the ſaid former declaration and plea named, and the ſaid *T. I.* in the ſaid bill againſt him the ſaid *T. I.* exhibited, are one and the ſame perſon, and not other, nor different: And the ſaid *T. I.* further ſays, that the goods and chattels in the declaration and plea mentioned and the ſaid goods and chattels

Of defendant's appearing.

Imparling.

Plea ſtill pending.

Averment, that the perſons and cauſe of action are the ſame.

tels mentioned in the ſaid bill now exhibited againſt the ſaid *T.* are one and the ſame goods and chattels, and not other, nor different; and this he is ready to verify: Wherefore he prays judgment of the ſaid bill exhibited in form aforeſaid, (the ſaid former plea and declaration as aforeſaid ſtill depending here in court undiſcuſſed and undetermined) and that the ſaid bill may be quaſhed, *&c.*

B. R. Replication nul tiel record, to a plea of another action for the ſame matter in the ſame court. Lill. Ent. 7.

And the ſaid *E. D.* ſays, that by any thing by the ſaid *O. G.* above by pleading alledged, the ſaid bill of the ſaid *E.* now filed ought not to be quaſhed, becauſe he ſays, that there is not any ſuch record of the ſaid bill in the ſaid plea ſpecified, filed or remaining of record in the ſaid court of our ſaid lady the preſent queen before the queen herſelf, as the ſaid *O.* has above by pleading alledged; and this he is ready to verify: Wherefore he prays judgment, and that the ſaid bill of the ſaid *E.* now filed may be adjudged good, and that the ſaid *O.* may anſwer thereto, or in default thereof, that his damages by occaſion of the premiſſes may be adjudged to him, *&c.*

Rejoinder quod habetur tale record'.

And the ſaid *O.* ſays, that there is ſuch record of the ſaid bill in the ſaid plea of the ſaid *O.* above ſpecified, filed of record in the ſaid court of our ſaid lady the queen before the queen herſelf, to wit, at *Weſtminſter* aforeſaid, as he the ſaid *O.* has above by pleading alledged, as appears on the files of bills of the ſaid term of *St. Hilary* laſt paſt in the ſaid plea laſt mentioned, filed of record; and this he is ready to verify by that record: And

he prays, that the term and files of bills may be ſeen and inſpected by the court of our ſaid lady the now queen here. *But*, &c. [*Continuance, ut antea.*]

Demurrer to the replication. Salk. 218, 22, 93, 94.

And the ſaid *O.* ſays, that the ſaid plea by the ſaid *E.* above by replying pleaded, and the matter therein contained, are not ſufficient in law to compel the ſaid *O.* to anſwer to the ſaid bill of the ſaid *E.* to which the ſaid *O.* has no need, nor is he bound by the law of the land in any manner to anſwer; and this he is ready to verify: Wherefore for default of a ſufficient replication of the ſaid *E.* in this behalf, the ſaid *O.* as before prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, &c.

Joinder.

And the ſaid *E.* ſays, that the ſaid plea by him the ſaid *E.* in manner and form aforeſaid above by replying pleaded, and the matter therein contained, are good and ſufficient in law to compel the ſaid *O.* to anſwer to the ſaid bill of the ſaid *E.* Which ſaid plea, and the matter therein contained, the ſaid *E.* is ready to verify and prove, as the court, &c. And becauſe the ſaid *O.* does not anſwer the ſaid plea, nor has yet any ways denied it, the ſaid *E.* prays judgment, and that the ſaid bill of the ſaid *E.* may be adjudged good, &c. And that the ſaid *O.* may anſwer further thereto, &c. or in default thereof, that his damages by occaſion of the premiſſes may be adjudged to him, &c. *But*, &c. [*Continuance, ut antea.*]

And

And now at this day, to wit, on *Wedneſday* next after fifteen days of *Eaſter* in the ſame term, to which day the ſaid *H. ſaving to himſelf all and all manner of exceptions to the ſaid bill of the ſaid* E. had leave to imparle to the ſaid bill, and to anſwer, *&c.* before which day her majeſty queen *Mary* died, before our ſaid lord the king at *Weſtminſter* came as well the ſaid *E.* by his attorney aforeſaid, as the ſaid *H.* by *R. S.* his attorney; and the ſaid, *H.* defends the force and injury, *&c.* and ſays, that he the ſaid *H.* ought not to be compelled to anſwer the ſaid bill, becauſe he ſays, that the ſaid *E.* heretofore, to wit, in the term of the Holy *Trinity* laſt paſt, in the court of our lord the preſent king and of the late queen *Mary* of the bench impleaded the ſaid *H.* in a certain plea of treſpaſs upon the caſe, and for the ſame cauſe in the ſaid declaration above mentioned, as by the record thereof remaining in the ſame court appears, and that the ſaid parties to and in the plea in the ſaid court of the bench, and the ſaid *E. B.* the preſent plaintiff, and he the ſaid *H. D.* are the ſame perſons, and not other or divers; and that the ſaid plea in the ſaid court of the bench ſtill remains undetermined; and this he is ready to verify: Wherefore he prays judgment, if he ought to be compelled to anſwer to the ſaid bill, *&c.*

Special imparlance.

Demiſe of queen Mary.

Plea lies alibi pendens. B. R. Lill. Ent. 7.

Salk. 715.

And the ſaid *E.* ſays, that notwithſtanding any thing by the ſaid *H.* above by pleading alledged, he the ſaid *H.* ought to be compelled to anſwer to the declaration of him the

Replication nul tiel record.

ſaid *E.* becauſe he ſays, that there is not any ſuch record of the impleading the ſaid *H.* at the ſuit of the ſaid *E.* remaining in the ſaid court of our ſaid lord the king of the bench, as the ſaid *H.* has above by pleading alledged; and this he is ready to verify: Wherefore he prays judgment, and that the ſaid *H.* may anſwer to the bill of the ſaid *E.* *&c.*

Plea to a ſci. fa. quare executionem non in error, that there are not 15 days between the teſte and return. Lill. Ent. 9.

And the ſaid *N.* at that day being ſolemnly demanded, by *T. C.* his attorney, alſo comes and prays judgment of the ſaid writ of *ſcire facias*, becauſe he ſays, that there are not fifteen days between the teſte and return of the ſaid writ of *ſcire facias*; and this he is ready to verify: Wherefore he prays judgment of that writ, and that the ſaid writ may be quaſhed, *&c.*

Demurrer.

And the ſaid *M.* ſays, that by any thing by the ſaid *N.* above by pleading alledged the ſaid writ of the ſaid *M.* ought not to be quaſhed, becauſe he ſays that the ſaid plea by the ſaid *N.* in manner and form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to quaſh the ſaid writ of the ſaid *M.* againſt the ſaid *N.* to which ſaid plea in manner and form aforeſaid pleaded the ſaid *M.* has no need, and is not bound by the law of the land in any manner to anſwer; and this he is ready to verify: *Wherefore for default of a ſufficient plea of the ſaid* N. *in this behalf, the ſaid* M. *prays judgment and his execution, according to the force,*

force, form and effect of the ſaid recovery to be adjudged to him.

And the ſaid *N.* ſays, that the ſaid plea by him the ſaid *N.* in manner and form aforeſaid above pleaded, and the matter therein contained, are good and ſufficient in law to quaſh the ſaid writ of the ſaid *M.* againſt him the ſaid *N.* which ſaid plea, and the matter therein contained, the ſaid *N.* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *M.* does not anſwer the ſaid plea, nor as yet has any ways denied it, the ſaid *N.* as before prays judgment, and that the ſaid writ may be quaſhed, *&c. But, &c.* [*Continuance as before.*] Joinder.

And the ſaid *C. F.* by *J. L.* his attorney, comes and prays judgment in the ſaid writ of *ſcire facias*, becauſe he ſays, that after rendering the ſaid judgment in the ſaid writ above ſpecified, to wit on the ſixteenth day of *November* in the ſixth year of the reign of our ſovereign lord *William* the third, now king, and our ſovereign lady *Mary* late queen of *England*, at *Weſtminſter* aforeſaid in the county of *Middleſex* aforeſaid, he the ſaid *C. F* for reverſing the ſaid judgment proſecuted out of the court of *Chancery* of our ſaid lord the king and lady the late queen then held at *Weſtminſter* aforeſaid in the county of *Middleſex*, a certain writ of our ſaid lord the king and lady the late queen for correcting errors of and upon the ſaid judgment in the ſaid writ ſpecified, directed to Sir *John Holt*, knt. Plea to a ſci. fa. a writ of error returnable in the Exchequer chamber. Lill. Ent. 3. Pract. Reg. 5, 6.

knt. chief juſtice of our ſaid lord the king and lady the late queen, aſſigned to hold pleas in the court of our ſaid lord the king and lady the late queen, before our ſaid lord the king and lady the late queen, and returnable on *Tueſday* the twenty-ſeventh day of this inſt. *November* then next enſuing, in the court of *Exchequer* chamber of our ſaid lord the king and lady the late queen at *Weſtminſter*, before the juſtices of our ſaid lord the king and lady the late queen of the bench, and barons of the *Exchequer* of our ſaid lord the king and lady the late queen, of the degree of the coif, according to the form of the ſtatute in ſuch caſe made and provided; which ſaid writ, after the iſſuing and before the return thereof, to wit, on the twentieth day of *November* in the ſaid ſixth year of the reign of the ſaid king and queen at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, was in due form of law delivered to the ſaid Sir *John Holt* the ſaid chief juſtice, to be executed in form of law, which ſaid Sir *John Holt* the ſaid chief juſtice has not yet returned the ſaid writ for correcting the ſaid errors into the ſaid *Exchequer* chamber, and has done nothing thereupon; and this he is ready to verify: Wherefore he prays judgment, if he the ſaid *C.* ought to be compelled to anſwer to the ſaid writ of *ſcire facias* of the ſaid *C. N.* pending the ſaid writ of error undetermined, *&c.*

And

And the ſaid *J. F.* by *J. S.* his attorney, comes and defends the force and injury, *&c.* and prays judgment of the ſaid bill of the ſaid *R. D.* becauſe he ſays, that after the giving the ſaid judgment in the ſaid declaration ſpecified, and before the exhibiting the bill of the ſaid *R. D.* to wit, on the twenty-ninth day of *October* in the ſeventh year of the reign of our lord the preſent king, the ſaid *J. F.* for reverſing the ſaid judgment ſued forth of the court of *Chancery* of our ſaid lord the king, the ſame court being then at *Weſtminſter*, a certain writ of our ſaid lord the preſent king, for correcting errors in the record and proceſs, and alſo in giving that judgment directed to the king's right truſty and well-beloved Sir *John Holt*, knt. then and ſtill chief juſtice of our ſaid lord the king aſſigned to hold pleas before the king himſelf; by which ſaid writ our ſaid lord the king commanded his ſaid chief juſtice, that if judgment was thereupon then given, then he ſhould cauſe the record and proceſs of the ſaid plaint, with all things touching the ſame, to come before his juſtices of the common bench and his barons of the *Exchequer* of the degree of the coif in the *Exchequer* chamber of our ſaid lord the king at *Weſtminſter*, on *Wedneſday* the twenty-ſeventh day of *November* then next enſuing, that the ſaid juſtices of the Common Bench and barons viewing and examining the ſaid record and proceſs might cauſe further to be done therein, as

Plea, a writ of error depending in the Exchequer chamber. B. R. Lill. Ent. 11.

as of right and according to the form of the ſtatute in that caſe made and provided ſhould be meet to be done; by virtue of which ſaid writ of error the ſaid chief juſtice afterwards, to wit, on the ſaid twenty-ſeventh day of *November* tranſmitted the record and proceſs of the plaint and judgment aforeſaid, with all things touching the ſame, before the juſtices of our ſaid lord the king of the common bench and his barons of the *Exchequer* of the degree of the coif in the ſaid *Exchequer* chamber at *Weſtminſter* aforeſaid: And the record and proceſs of the ſaid judgment ſtill remains there, and the ſaid writ for correcting errors ſtill remains undetermined in the ſame court of the ſaid *Exchequer* chamber at *Weſtminſter* aforeſaid; and the ſaid judgment is yet neither affirmed nor reverſed, as by the record thereof remaining in the ſame court of the ſaid *Exchequer* chamber at *Weſtminſter* aforeſaid before the ſaid juſtices of our ſaid lord the king of the Common Bench and barons aforeſaid more fully appears; and this the ſaid *J. F.* is ready to verify by the record of the judgment and proceſs aforeſaid: Wherefore he prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Edward Northey,
St. John Broderick.

Middleſex,

Middleſex, to wit, *J. C.* complains of *J. H. in the cuſtody of Sir* R. D. *bart. chief ſteward of the liberty of* St. Edmund's Bury *in the county aforeſaid*, of a plea that he render to him 100 *l.* [Declaration in debt on a judgment] And thereupon he brings ſuit, *&c.*

Declar tion againſt a priſoner in the cuſtody of the bailiff of a liberty.

And the ſaid *J.* by *J. A.* his attorney, comes and defends the force and injury, and ſays, that the liberty of *St. Edmund's Bury* is, and was from the time to the contrary whereof the memory of man is not, in the county of *Suffolk*, and not in the county of *Middleſex*, as by the bill of the ſaid *J. C.* is above ſuppoſed; and this he is ready to verify: Wherefore he prays judgment, if he the ſaid *J. H.* ought to anſwer to the bill of the ſaid *J. C.* *&c.*

Plea, miſpriſion of the county. B.R. Lill. Ent. 4.

L. S. gent. maketh oath, That the liberty of *St. Edmund's Bury*, as the deponent is credibly informed and verily believes, is in the county of *Suffolk*, and not in the county of *Middleſex*, as the plaintiff by his declaration hereunto annexed hath alledged.

L. S.

Affidavit of the truth of the plea. Stat. 4 & 5 Annæ.

And the ſaid *R.* by *T. H.* his attorney, comes and defends the force and injury, and prays oyer of the ſaid writing; and it is read to him in theſe words, to wit, *Noverint univerſi me, &c. teneri, &c. in ducent' & quinquagint'*

Plea, falſe latin in the bond. B. R. Lill. Ent. 5.

quagint' libris, &c. [the obligations ſet forth at length.] He alſo prays oyer of the condition of the ſaid writing, and it is read to him in theſe words, to wit, The condition, *&c.* which being read and heard the ſaid *R.* prays judgment of the ſaid bill, becauſe he ſays, that the ſaid *J.* by his bill above ſuppoſes that the ſaid *R.* owes to the ſaid *J. ducent' & quinquagint' libras*, where in truth there is not any ſuch word in the ſaid writing, containing and warranting this word in the ſaid declaration ſpecified; and this he is ready to verify: Wherefore he prays judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Hob. 18, 19, 20. Salk. 462. Pract. Reg. 146.

Plea in abatement, miſnomer in the defendant's chriſtian name. B. R. Lill. Ent. 6. Pract. Reg. 199. Carth. 207.

And Carolinus Smith, againſt whom the ſaid *Richard Griggs* by his bill exhibited complaineth by the name of *Charles Smith*, by *J. A.* his attorney cometh and defendeth the force and injury, *&c.* and prayeth judgment of the ſaid bill, becauſe he ſaith that he was baptized by the name of *Carolinus*, and by the ſame name from the time of his baptiſm hitherto hath been always known and named by the name of *Carolinus**; *without this*, that he the ſaid *Carolinus* now is or ever was known or named by the name of *Charles*, as by the ſaid bill is above ſuppoſed; and this

Traverſe.

* The traverſe is material, for one may have a *name* and *ſurname* that never was baptized. *Salk.* 6. 6 *Mod.* 115. *Holt.* 492, 563.

he

he is ready to verify: Wherefore he prayeth judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Martha Hinton widow complaineth of *James Altham* and *Anne* his wife, otherwiſe called *Anne Jeſſon*, of the city of *Coventry* ſpinſter, in the cuſtody of the marſhal, of a plea that they render to her 400 *l.* (on a bond made by the feme *dum ſola.*)

And the ſaid *James* and one —— his wife come in their proper perſons and defend the force and injury, and ſay that ſhe the ſame —— was baptized by the name of —— and is, and from the time of her nativity hitherto was always known and named by the name of ——; *without this*, that ſhe the ſame —— now is, or ever was known or named by the name of *Anne*, as by the ſaid bill is ſuppoſed; and this they are ready to verify: Wherefore they pray judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Plea in abatement by baron and feme, miſnomer in the wife. B. R.

T. L.

And lady *Honoria Gerard*, againſt whom the ſaid *Thomas* hath exhibited his bill by the name of lady *Elizabeth Gerrard*, otherwiſe *Garret*, cometh in her proper perſon and defendeth the force and injury, *&c.* and prayeth judgment of the ſaid bill, becauſe ſhe ſaith that ſhe was baptized by the name of *Honoria*, to wit, at the pariſh of *St Clement Danes* aforeſaid, and from her baptiſm to

Plea in abatement, miſnomer in the defendant's chriſtian name. B. R. M. 5 Ann. Ro. 439. Salk. 8, 717. Carth. 207. Lib. Placit. 1.

Traverſe.

to this time has always been known and named by that name; *without this*, that ſhe the ſaid *Honoria* now is or ever was known or named by the name of *Elizabeth*, as by the ſaid bill is above ſuppoſed; and this ſhe is ready to verify: Wherefore ſhe prayeth judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

Imparlance to a plea.

And the ſaid *Thomas Stroud* prayeth day to imparle to the ſaid plea; and it is granted to him, *&c.* And, upon this, day is thereupon given to the parties aforeſaid, before our lady the queen at *Weſtminſter*, until *Thurſday* next after the octave of *St. Hilary*, to wit, to the ſaid *Thomas* to imparle to the ſaid plea, and then to reply, *&c.* At which day, before our lady the queen at *Weſtminſter*, cometh as well the ſaid *Thomas Stroud* by his attorney aforeſaid, as the ſaid defendant in her proper perſon.

Further imparlance.

And the ſaid *Thomas* prayeth day to imparle further to the ſaid plea; And it is granted to him, *&c.* And, upon this, day is thereupon further given to the ſaid parties, before our lady the queen at *Weſtminſter*, until *Wedneſday* next after fifteen days from the day of *Eaſter*, to wit, to the ſaid *Thomas*, to [*Verbatim ut antea, uſque*] her proper perſon.

Replication, eſtoppel the defendant put in bail by the name of Elizabeth.

And the ſaid *Thomas* ſaith, † that the ſaid lady *Gerard*,

† The putting in bail is the act of the court, and not of the party, and therefore cannot eſtop her; but the defendant

rard, otherwiſe *Garret*, the perſon againſt whom the ſaid *Thomas* hath exhibited his ſaid bill by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, ought not to be admitted to her ſaid plea for quaſhing the ſaid bill of the ſaid *Thomas*, becauſe he ſaith that ſhe the ſaid lady *Gerard*, otherwiſe *Garret*, the perſon againſt whom the ſaid *Thomas* in the term of *St. Michael* laſt paſt exhibited his ſaid bill by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, in the ſame term of *St. Michael* put in common bail in the court here, at the ſuit of the ſaid *Thomas*, in the plea aforeſaid, by the name of lady *Elizabeth Garret*, as by the record thereof remaining in the ſame court of our ſaid lady the queen, before the queen herſelf at *Weſtminſter*, more fully appeareth; and this he is ready to verify by that record: Wherefore he prayeth judgment if the ſaid lady *Gerard*, otherwiſe *Garret*, the perſon againſt whom the ſaid *Thomas* hath exhibited his ſaid bill, by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, ought to be admit-

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fendant appearing by that name, may eſtop himſelf, and bail is an appearance as well as bail: but then it ought to be pleaded as an appearance, if the plaintiff would make uſe uſe of that as an eſtoppel. In debt on a bail-bond, if the defendant has put in common bail, he cannot plead he has put in common bail, but *appeared at the day*, for he muſt plead according to the operation things have in law. *Salk.* 8.

ted to her ſaid plea for quaſhing his ſaid bill, contrary to the ſaid record, &c.

Demurrer to the replication.

And the ſaid *Honoria Gerard*, againſt whom the ſaid *Thomas* has exhibited his ſaid bill by the name of lady *Elizabeth Gerard*, otherwiſe *Garret*, ſaith, that the ſaid plea above in replying pleaded by the ſaid *Thomas* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to compel the ſaid *Honoria* to anſwer the ſaid bill of the ſaid *Thomas*; to which ſaid plea the ſaid *Honoria* hath no need, nor is ſhe obliged by the law of the land, in any manner to anſwer; and this ſhe is ready to verify: Wherefore, for want of a ſufficient replication in this caſe, the ſaid *Honoria*, as before, prayeth judgment of the ſaid bill, and that the ſaid bill may be quaſhed, &c.

Joinder.

And the ſaid *Thomas* ſaith, that the ſaid plea above in replying pleaded by the ſaid *Thomas* in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to compel the ſaid *Elizabeth* to anſwer to the ſaid bill of the ſaid *Thomas* thereupon againſt the ſaid *Elizabeth*; which ſaid plea, and the matter therein contained, the ſaid *Thomas* is ready to verify and prove, as the court, &c. And becauſe the ſaid *Elizabeth* hath not anſwered to the ſaid plea, nor hitherto in any manner denied the ſame, the ſaid *Thomas* as before prayeth judgment, and that the ſaid *Elizabeth* may be compelled

Continuance.

to anſwer to the ſaid bill of the ſaid *Thomas*, &c. *But* becauſe the court of our ſaid lady the

the queen now here is not adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lady the queen at *Weſtminſter*, until —— next after ———, to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lady the queen now here is not adviſed thereof.

Oyer prayed of original in homine replegiando. B. R. Salk. 5, 705.

And the ſaid *Thomas Woods* and *Mary* his wife, by *Richard Aſh* their attorney, come and pray oyer of the ſaid original writ, and of the return of the ſaid writ; and they are read to them in theſe words, to wit, *Anne* by the grace of God [The writ and return *in hæc verba*] *Which* being read and heard, the ſaid *Thomas Woods* and *Mary* his wife pray judgment of the ſaid writ, becauſe they ſay that by form of the ſtatute the * addition of the town or hamlet, or place and county of the dwelling of the ſaid *Thomas*, ought to be contained in the ſaid original writ of the ſaid *Charles* earl of *Banbury*, and *Mary* counteſs of *Banbury* his wife; and this they are ready to verify: Wherefore, for that ſuch addition is not contained

Plea in abatement, no addition of the place of defendants dwelling in the writ. 1 H. 5. c. 5.

* The original replevin is *vicountiel*, and the court proceeds upon the *pluries*: Therefore the firſt replevin needs no addition within the ſtatute; and where the firſt writ is without addition, it cannot be neceſſary in the ſecond; nay, the inſerting ſuch an addition would vitiate the ſecond writ, for it cannot vary from the former. *Salk.* 5.

in the ſame writ, the ſaid *Thomas* and *Mary* pray judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.*

Demurrer. *And* the ſaid *Charles* earl of *Banbury*, and the ſaid *Mary* counteſs of *Banbury* his wife, ſay, that by any thing by the ſaid *Thomas* and *Mary* above pleaded for quaſhing the ſaid writ, the writ of the ſaid earl and counteſs ought not to be quaſhed, becauſe they ſay that the ſaid plea above pleaded by the ſaid *Thomas* and *Mary* his wife, in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to quaſh the ſaid writ of the ſaid earl and counteſs; to which ſaid plea the ſaid earl and counteſs have no need, nor are they obliged by the law of the land, in any manner to anſwer; and this they are ready to verify: Wherefore, for want of a ſufficient plea of the ſaid *Thomas* and *Mary* in this caſe, they the ſaid earl and counteſs pray judgment, and that the writ of the ſaid earl and counteſs may be adjudged good, and that the ſaid *Thomas* and *Mary* may anſwer further to the ſaid writ, *&c.*

Joinder. *And* the ſaid *Thomas* and *Mary* his wife ſay, that the ſaid plea above pleaded by the ſaid *Thomas* and *Mary*, in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to quaſh the ſaid writ of the ſaid earl and counteſs; which ſaid plea, and the matter therein contained, they the ſaid *Thomas* and *Mary* are ready to verify, as the court, *&c.* And becauſe the ſaid

ſaid earl and counteſs have not anſwered to the ſaid plea, nor as yet any ways denied the ſame, the ſaid *Thomas* and *Mary*, as at firſt, pray judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.* *But* be- Continu-
cauſe the court of our ſaid lady the queen ance.
now here is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lady the queen until —— whereſoever, *&c.* to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lady the queen now here is not yet adviſed thereof.

And the ſaid *Simon Winch*, by *John Sandwell* his attorney, cometh and ſaith, that the tenements in the ſaid declaration above ſpecified are, and from the time to the contrary whereof the memory of man is not, have been parcel of the manor of *Bray* in the county aforeſaid, of which ſaid manor our lord the king and lady the queen are ſeiſed in right of their crown; and that the ſaid* manor is of the ancient demeſne of the crown of our lord the king and lady the queen; Plea in abatement in ejectment, that the lands are parcel of the manor of B. which is ancient demeſne. B. R. Salk. 56, 775.

* *Per cur.* Suppoſing the manor to be antient demeſne, yet the manor and the demeſnes of the manor are impleadable at common law, and not in the lord's court, for then the lord would be judge in his own cauſe. But antient demeſne lands, held of the manors, are impleadable in the court of antient demeſne, and there only. *Salk.* 56. *Vide F. N. B.* 11 *m.* 1 *Roll.* 334.

and that the ſaid tenements are impleadable and have been impleaded, from the time to the contrary whereof the memory of man is not, in the court of the ſaid manor by the ſmall writ of our lord the king and lady the queen of right cloſe; and this he is ready to verify, as the court ſhall conſider, *&c.* Wherefore he prayeth judgment if the court of our lord the king and lady the queen here will take cognizance of the plea thereupon, *&c.*

Demurrer. *And* the ſaid *Thomas Barker* ſaith, that by any thing by the ſaid *Simon Winch* in pleading above alledged, the court of our lord the king and lady the queen here ought not to be barred from having cognizance of the ſaid plea, becauſe he ſaith that the ſaid plea above pleaded by the ſaid *Simon* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to bar the ſaid court of our lord the king and lady the queen now here from having cognizance of the ſaid plea; to which ſaid plea, and the matter therein contained, the ſaid *Thomas Barker* has no need, nor is he obliged by the law of the land, in any manner to anſwer; and this he is ready to verify: Wherefore, for want of a ſufficient anſwer in this caſe, the ſaid *Thomas* prayeth judgment, and his ſaid term yet to come of and in the tenements aforeſaid, with the appurtenances, together with his damages by occaſion of the treſpaſs and ejectment of farm aforeſaid, to be

be adjudged to him, *&c.* *And* for cauſes of demurrer in law upon the ſaid plea, the ſaid *Thomas*, according to the form of the ſtatute in ſuch caſes lately made and provided, ſheweth and demonſtrateth to the court here theſe cauſes following, to wit, for that the ſaid *Simon* hath not in his ſaid plea ſhewed to the court here, nor alledged that the ſaid tenements, with the appurtenances mentioned in the ſaid declaration, or any parcel of them, are held of our ſaid lord and lady the preſent king and queen, of their manor of *Bray* aforeſaid, and becauſe the ſaid plea is incertain, inſenſible, and wants form.

Cauſes of demurrer do not ſay the lands are held of the manor of B.

And the ſaid *Simon* ſaith, that the ſaid plea above pleaded by him the ſaid *Simon* in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to bar the ſaid court of our lord the king and lady the queen now here from having cognizance of the ſaid plea; which ſaid plea, and the matter therein contained, he the ſaid *Simon* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *Thomas* hath not anſwered to the ſaid plea, nor as yet any ways denied the ſame, he the ſaid *Simon* as at firſt prayeth judgment if the court of our ſaid lord the king and lady the queen now here, will or ought to take cognizance of the ſaid plea. *But* becauſe [Continuances to *on the morrow of All Souls*] *At which day* before our lord the king and lady the queen at *Weſtminſter* the ſaid parties come by their attornies aforeſaid.

Joinder.

Continuances.

Judgment, Reſpondeas ouſter.

aforeſaid. *Whereupon* the court of our ſaid lord the king and lady the queen now here having ſeen and fully underſtood all and ſingular the premiſſes, and having maturely deliberated thereupon, for that it appeareth to the court of our ſaid lord the king and lady the queen now here, that the ſaid plea above pleaded by the ſaid *Simon* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to bar the ſaid court of our ſaid lord the king and lady the queen now here from having cognizance of the ſaid plea, the ſaid *Simon* is bid by the court to anſwer further to the declaration. *Whereupon* the ſaid *Simon*, being ſolemnly demanded, by the ſaid *John Sandwell* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that he the ſaid *Simon* is in nothing guilty of the treſpaſs and ejectment aforeſaid as the ſaid *Thomas* above complaineth againſt him; and of this he putteth himſelf upon the country. *And* the ſaid *Thomas* doth ſo likewiſe, *&c.* *Therefore* it is commanded to the ſheriff that he cauſe to come before our lord the king and lady the queen, on the *octave* of the purification of the bleſſed *Mary*, whereſoever, *&c.* twelve, *&c.* by whom, *&c.* and who neither, *&c.* to take cognizance, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, at the ſame place, *&c.*

Plea, Not guilty.

Iſſue.

Venire facias by original awarded.

Plea in abatement to treſpaſs, that one of the defen-

And the ſaid *Margaret* and *Mary* in their proper perſons come and defend the force and injury, *&c.* and pray judgment of the

ſaid

ſaid bill of the ſaid *Rebecca*, and that the ſaid bill may be quaſhed, becauſe they ſay that the cloſe and yard, and alſo the places in which the ſaid treſpaſs is ſuppoſed to be done, are, and at the ſaid time in which, *&c.* were one acre of land; and * that the ſaid *Rebecca*, at the ſaid time in which, *&c.* had nothing in the ſame acre of land, unleſs together in common, and as undivided, with the ſaid *Mary Bonner*, † who is alive at the pariſh of *Stepney* in the county of *Middleſex*; And this they are ready to verify: Wherefore they pray judgment of the ſaid bill, and that the ſaid bill may be quaſhed, *&c.*

dants is tenant in common with the plaintiff. B. R. Salk. 4, 708.

And the ſaid *Rebecca* ſaith, that the ſaid bill of her the ſaid *Rebecca* ought not to be quaſhed for the reaſon before alledged, becauſe ſhe ſaith, that at the ſeveral times the ſaid ſeveral treſpaſſes are ſuppoſed to be done, ſhe was ſole ſeiſed of the ſaid cloſe and yard in the ſaid declaration of the ſaid *Rebecca* firſt mentioned, and alſo of the ſaid cloſe and yard in the ſaid declaration of the ſaid *Re-*

Replication, ſole ſeiſed.

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* In treſpaſs, the defendant cannot plead in abatement, that he himſelf is tenant in common with the plaintiff, becauſe he may give it in evidence; but on the other ſide he may plead, that another is tenant in common with the plaintiff, for that will not prove him not guilty. *Salk* 4.

† Where ever jointenancy is pleaded in abatement, the life of the other jointenant not named is averred in the plea, otherwiſe the plea is ill. *Salk.* 32. 1 *Saund.* 29.

becca

becca ſecondly mentioned, and of the ſaid well in the ſaid declaration alſo mentioned, and alſo of the third yard in the ſaid declaration of the ſaid *Rebecca* thirdly mentioned; and that the ſaid *Margaret* and *Mary* at the ſaid ſeveral times in which, *&c.* did the ſeveral treſpaſſes aforeſaid, as the ſaid *Rebecca* by her ſaid declaration above complaineth againſt them: † *Without this*, that the ſaid *M. B.* at the reſpective times aforeſaid, or at any of them, had any thing in the ſaid premiſſes, or any of them: and ſhe prays that this may be inquired of by the country.

Traverſe.

Demurrer.

And the ſaid *M.* and *M.* ſay [*prout*, &c.] may be quaſhed. *And* for cauſes of demurrer in this caſe, according to the form of the ſtatute in ſuch caſe lately made and provided, the ſaid *M.* and *M.* ſhew to the court here theſe cauſes following, for that the ſaid plea of the ſaid *R.* is double, incertain, and wanteth form, and concludeth to the country.

Cauſes of demurrer.

Joinder.

And the ſaid *Rebecca* ſaith [*prout antea uſque*] prayeth judgment, and that the ſaid *M.* and *M.* may anſwer further to the ſaid bill of the ſaid *R.* *But* becauſe [*ut antea.*]

Continuance.

† Whether the plaintiff ſhould not have concluded his *without that* with an averment? And the court ſeemed to think, that where an *without that* comprizes the whole matter generally, as *without ſuch a cauſe*, it may conclude, *and an anſwer over* awarded.

In the *King's Bench.*

Between { *C. D.* plaintiff, / *A. B.* defendant.

A. B. the defendant in this cauſe maketh oath, that the ſubſtance and matter of fact in the plea hereunto annexed is true.

Stat 4 & 5 *Annæ*, *c.* 16.

Affidavit of the truth of a plea in abatement. Lill. Ent. 1.

Accompt.

London, *to wit.* N. *A.* and *T. L.* wardens of the parochial church of *St. Katherine Coleman-ſtreet*, *London*, complain of *T. T.* late warden of the ſaid parochial church, being in the cuſtody of the marſhal, *&c.* of a plea, that he render to them his reaſonable accounts for the time in which he was warden of the ſaid parochial church, and receiver of the money of the ſaid parochial church; *For that*, *to wit*, that whereas the ſaid *T. T.* from the 10th day of *April* in the year of our Lord 1675, until the firſt day of *April* in the year of our Lord 1676, at *London* aforeſaid, to wit, in the pariſh, *&c.* in the ward of *A. London*, was warden of the ſaid church, and receiver of

B. R. Declaration in accompt by churchwardens againſt a late churchwarden. Lill. Ent. 12.

Cro. Jac. 234 Pract. Reg. 267, 680, 30, 34.

of the money of the ſaid parochial church for the time aforeſaid, and had the care and adminiſtration of the goods and money of the ſaid parochial church for the time aforeſaid, and during that time at *London* aforeſaid in the pariſh and ward aforeſaid, as warden of the ſaid church, received by the proper hands of him the ſaid *T. T.* 100*l.* of lawful money of *England*, of the money of the ſaid church, to beſtow and lay out to the uſe of the ſaid parochial church, and to render his reaſonable account of the ſame to the ſaid *N. A.* and *T. L.* wardens of the ſaid church, when he ſhould be thereto required: *Yet* the ſaid *T. T.* although often required, *&c.* has not rendered his reaſonable account of that money to the ſaid *N. A.* and *T. L.* or to either of them; but he has hitherto intirely refuſed and ſtill does refuſe to render the ſame to the ſaid *N.* and *T.* to the damage of the ſaid *N.* and *T.* 100*l.* and thereupon they bring ſuit, *&c. See Plea* title **Abatement.**

Breach.

B R. Declaration in accompt againſt a guardian and bailiff. Paſ. 13 W. 3. Lill. Ent. 13. 1 Vent. 105. Salk. 9.

D——*C* *T.* gent. complains of *J. T.* gent. being in the cuſtody of the marſhal, *&c.* of a plea that he render to him his reaſonable account for the time in which he was guardian of the ſaid *C.* and alſo for the time in which he was bailiff of the ſaid *C.* at *Swanwicke* in the pariſh of *Alfreton* in the county aforeſaid, *For that*, to wit, that whereas it is provided by the common council of our lord the king of *England*, that the

to wit.

1 Count as guardian.

the guardians of lands and tenements which are holden in ſocage, ſhall render to the heirs of thoſe lands and tenements, when they ſhall come to full age, their reaſonable account of the iſſues coming from thoſe lands and tenements for the time in which they had that guardianſhip, by reaſon of the minority of the ſaid heirs, the ſaid *J.* although often required, *&c.* has not rendered to the ſaid *C.* his reaſonable account of the iſſues coming of the lands and tenements of the ſaid *C.* to wit, of two meſſuages, three cottages, five gardens and eighty acres of land, thirty acres of meadow, eighty acres of paſture and thirty acres of wood, with the appurtenances in *Swanwicke* aforeſaid in the pariſh of *Alfreton* aforeſaid in the county aforeſaid; of which ſaid premiſſes the ſaid *J.* had the guardianſhip, to wit, from the ſixth day of *January* in the year of our Lord 1684, until the 20th day of *July* in the year of our Lord 1691, (the ſaid *C.* during the whole time being under the age of fourteen years) and during all that time received the iſſues and profits of the ſaid meſſuages and tenements, but has hitherto refuſed and ſtill does refuſe to render to him the ſaid account; *And alſo whereas* the ſaid *J.* afterwards, to wit, on the 20th day of *July* in the year of our Lord 1691, aforeſaid, at *Swanwicke* aforeſaid in the ſaid pariſh of *Alfreton* in the county aforeſaid, was bailiff of the ſaid *C.* of two meſſuages, three cottages, five gardens, and eighty acres of land, thirty acres of meadow, eighty acres of paſture, and thirty acres of wood,

2 Count bailiff.

wood, with the appurtenances in *Swanwicke* aforeſaid in the ſaid pariſh of *Alfreton* in the county aforeſaid, from the ſaid 20th day of *July* in the year of our Lord 1691, until the 7th day of *October* in the year of our Lord 1698, and had and received the yearly profits thereof for that whole time, to render a reaſonable account thereof to the ſaid *C.* when he ſhould be required; yet the ſaid *J.* although often required, *&c.* has not yet rendered the ſaid reaſonable account to the ſaid *C.* but he has hitherto intirely refuſed and ſtill does refuſe to render the ſame to him, to the damage of the ſaid *C.* of 15,000 *l.* And thereupon he brings ſuit, *&c.*

B. R. Declaration in accompt by executors of a merchant againſt his factor as bailiff. Lill.Ent.13.

Middleſex, *to wit.* *J. T.* the younger, and *J. F.* executors of the teſtament and laſt will of *J. T.* the elder, deceaſed, complain of *H. L.* merchant, being in the cuſtody of the marſhal, *&c.* of a plea that he render to them a reaſonable account for the time in which he was bailiff of the ſaid *J. T.* the elder, and receiver of the money of the ſaid *J.* in his life-time at *Weſtminſter* in the country aforeſaid; *For that*, to wit, that whereas the ſaid *H.* on the tenth day of *May* in the thirty-firſt year of the reign of our ſovereign lord *Charles* the ſecond now king of *England*, *&c.* until the thirtieth day of *September* in the thirty-ſecond year of the reign of our ſaid lord the preſent king at *Weſtminſter*, in the county aforeſaid, was bailiff of the ſaid *J.* the teſtator in his life-time, and for that whole time having

having the care and management of divers goods and chattels of the ſaid *J. T.* the elder, to wit, of two thouſand pounds weight of tin, thirty firkins of ſtub-nails, two hundred and twenty-four pounds weight of mixed metal called *Spelter*, forty pounds weight of lead, and five hundred and fifty pounds weight of other mixed metal called tume glaſs, to the value of 3000 *l.* to wit, at *Weſtminſter* aforeſaid in the county aforeſaid, to merchandize and make profit thereof for the ſaid *J. T.* the elder, and to render a reaſonable account thereof to the ſaid *J. T.* the elder, when he ſhould be thereupon required, and was receiver of the money of the ſaid *J. T.* the elder for the whole time aforeſaid, and during this time received of the money of the ſaid *J. T.* the teſtator at *Weſtminſter* aforeſaid, by the hands of *P. P.* 113 *l.* 0 *s.* 5 *d.* and there by the hands of *P. C.* 9 *l.* and there by the proper hands of the ſaid *H. L.* 960 *l.* of lawful money of *England*, to render a reaſonable account thereof to the ſaid *J. T.* the teſtator, when he ſhould be thereto required: *Yet* the ſaid *H. L.* although often required, *&c.* has not rendered the ſaid reaſonable account to the ſaid *J. T.* the elder in his life-time, or to the ſaid *J. T.* the younger, and *J. F.* or to either of them, after the death of the ſaid *J. T.* the teſtator; but intirely refuſed to render the ſame to the ſaid *J. T.* the teſtator in his life-time, and to the ſaid *J. T.* the younger and *J. F.* after the death of the ſaid *J.* the teſtator, and ſtill refuſes to render

Breach.

render the ſame to the ſaid *J. T.* the younger and *J. F.* or to either of them, to the damage of the ſaid *J. T.* the younger and *J. F.* of 10,000*l.* And thereupon they bring ſuit, *&c.*

Profert of the probate.

And the ſaid *J. T.* the younger and *J. F.* bring here into court the letters teſtamentary of the ſaid *J. T.* the elder, by which it ſufficiently appears to the court here, that the ſaid *J. T.* the younger, and *J. F.* are executors of the teſtament of the ſaid *J. T.* the elder, and thereof have the adminiſtration, *&c.*

Hil. 18 *Geo.* 2.

Declaration in accompt, as bailiff of goods and chattels. B. R.

London, *to wit.* *J. E.* complaineth of *W. W.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, in a plea that he render to the ſaid *J.* a reaſonable account of the time in which he was the bailiff of the ſaid *J.* at *London* aforeſaid, for that whereas he the ſaid *W.* on the 14th day of *Auguſt* in the year of our Lord 1734, and from thence until the 1ſt day of *June* in the year of our Lord 1740, at *London* aforeſaid, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was the bailiff of the ſaid *J.* and for and during that time had the care and management of divers goods and chattels, to wit, of three gold watches, and two ſilver watches of the ſaid *J.* there to merchandize and make profit thereof for the ſaid *J.* and to render to the ſaid *J.* a reaſonable account thereof, when

when he ſhould be afterwards thereto requeſted; *Yet* the ſaid *W.* although often requeſted, hath not yet rendered the aforeſaid reaſonable account of the ſaid goods and chattels to the ſaid *J.* but to render the ſame to him hath hitherto wholly refuſed, and ſtill refuſeth, to the ſaid *J.* his damage of 100 *l.* And therefore he bringeth his ſuit, *&c.* Pledges, *&c.*

Plea Ne unques balliivus.

And the ſaid *W.* by *R. R.* his attorney cometh and defendeth the wrong and injury when, *&c.* and ſaith, that he never was bailiff of the ſaid *J.* nor had the care and management of the ſaid goods and chattels, nor of any parcel of them, to render account thereof to the ſaid *J.* when he ſhould be thereto requeſted in manner and form as the ſaid *J.* above complaineth againſt him: And of this he putteth himſelf upon the country.

Declaration in account by the preſent churchwardens againſt the late churchwardens. B. R. 10 Mod. 22. 11 Mod. 186, 263.

London, to wit, *J. B.* and *J. A.* now wardens of the parochial church of the pariſh of *St. Bartholomew the leſs* near the *Royal Exchange*, *London*, complain of *J E.* and *S. F.* late wardens of the ſame parochial church, being in the cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lady the queen, before the queen herſelf, of a plea, that they render to the ſaid *J.* and *J. A.* now wardens of the ſaid parochial church, a reaſonable account for the time in which they the ſaid *J. E.* and *S. F.* were wardens of the parochial church of the ſaid pariſh, and receivers of the monies, goods and chattels of the pariſhioners

ners of the ſaid parochial church of the pariſh of *St. Bartholomew the leſs*, near the *Royal Exchange*, *For that*, to wit, that the ſaid *J. E.* and *S. F.* being wardens of the ſaid church at *London* aforeſaid, in the pariſh aforeſaid, in the ward of *Broadſtreet*, from the feaſt of *Eaſter* in the year of our Lord 1706, until at and upon the feaſt of *Eaſter* in the year of our Lord 1708, within that time, by virtue of their ſaid office, had the care and adminiſtration of the goods and chattels of the pariſhioners of the ſaid parochial church, and received divers ſums of money hereafter mentioned, to the uſe of the pariſhioners of the ſaid church, paid to the ſaid *J. E.* and *S. F.* by divers perſons hereafter mentioned, to render account thereof; to wit, by the hands of *W. W.* 21 *l.* 6 *s.* 6 *d.* by the hands of *J. T.* 68 *s.* 6 *d.* by the hands of *M. E.* 6 *l.* 10 *s.* by the hands of *J. A.* 7 *l.* 16 *s.* 8 *d.* * by the hands of the pariſhioners of the ſaid pariſh 1000 *l.* by the hands of Mr. *G.* 30 *l.* by the hands of Mr. *P.* 14 *s.* 2 *d.* [and ſo of many others, and then the declaration proceeds as follows] to render a reaſonable account thereof to the ſaid pariſhioners of the ſaid paro-

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* The defendants pleaded, that the plaintiffs were never elected churchwardens: Iſſue, and verdict for the plaintiffs. Judgment, that as to 1000 *l.* ſaid to be received by the hands of the pariſhioners, the count ſhould abate, and that the defendants *go thereof without day*; and that as to the reſt, the defendants ſhould account. *Q. as to what was further done herein?*

chial

chial church, when they ſhould be thereunto required; *And* afterwards, to wit, on the 5th day of *April* in the year of our Lord 1708, the ſaid *J. E.* and *S. F.* from the office of wardens aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, were removed, and the ſaid *J. B.* and *J. A.* the preſent plaintiffs, afterwards, to wit, on the ſaid 5th day of *April* in the year of our Lord laſt aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, were in due manner elected and conſtituted into the office of wardens aforeſaid by the pariſhioners of the ſaid church, and now are wardens of the ſaid church: *Nevertheleſs* the ſaid *J. E.* and *S. F.* although often requeſted, have not yet rendered their account of the money and goods aforeſaid to the ſaid *J.* and *J. A.* now wardens of the ſaid church, but have altogether refuſed, and ſtill do refuſe to render the ſame to them, to the damage of the pariſhioners of the ſaid parochial church 2000 *l.* And thereupon they bring ſuit, *&c.*

Pledges, *&c.*

Bar.

Plea to an action againſt the marſhal for an eſcape, that E. G. in the declaration named eſcaped out of defendant's cuſtody againſt his will, and returned into the ſaid priſon without his knowledge, and is therein detained.

AND the ſaid *R.* in his proper perſon comes and defends the wrong and injury, when, *&c.* and ſays, that the ſaid *E. C.* ought not to have or maintain his ſaid action againſt him the ſaid *R.* becauſe he ſays, that after the ſaid commitment of the ſaid *E. G.* to the cuſtody of the ſaid *R.* in execution for the damages aforeſaid, at the ſuit of the ſaid *E. C.* in form aforeſaid made, to wit, on the twenty-ninth day of *Auguſt* in the ſixteenth year of the reign of our ſaid lord the king, ſhe the ſaid *E.* being then in a certain priſon called the *King's Bench* priſon, ſituate in the pariſh of *St. George the Martyr* in the county of *Surry*, in execution for the damages aforeſaid, under the cuſtody of the ſaid *R.* as aforeſaid, ſhe the ſame *E.* upon the ſame day and year, at the pariſh aforeſaid in the county aforeſaid, by force and arms broke the ſaid priſon, and out of the ſaid priſon, and out of the cuſtody of the ſaid *R.* againſt the will of the ſaid *R.* and without the knowledge of the ſaid *R.* fled and eſcaped to places to the ſaid *R.* unknown. *And* the ſaid *R.* further ſaith, that before the day of exhibiting the ſaid bill, and before the ſaid *R.* had any notice of the ſaid eſcape, that is to ſay, on the ſaid twenty-ninth day of *Auguſt* in the ſaid ſixteenth year of the reign of our ſaid lord the king, at the pariſh aforeſaid in the ſaid county, the ſaid *E. G.* into the priſon aforeſaid, without the knowledge of the ſaid

R. M.

R. M. returned, and continually after ſuch return hitherto the ſaid *E. G.* in the ſaid priſon, under the cuſtody of the ſaid *R. M.* in execution for the damages aforeſaid, at the ſuit of the ſaid *E. C.* hath been detained, and is yet detained by the ſaid *R. M.* which ſaid eſcape of the ſaid *E. G.* out of the ſaid priſon, and out of the cuſtody of the ſaid *R. M.* ſo as aboveſaid made, is the ſame eſcape for which the ſaid *E. C.* hath above declared againſt him the ſaid *R. M.* and this the ſaid *R. M.* is ready to verify: Wherefore he prays judgment, if the ſaid *E. C.* ought to have or maintain his ſaid action therefore againſt him the ſaid *R. M. &c.*

R. Draper.

N. B. There muſt be an affidavit of the truth of this plea.

J. Strange.

And the ſaid *J. G.* in his proper perſon comes and defends the force and injury, when, *&c.* and ſays that the ſaid *W. C.* ought not thereon to have or maintain his ſaid action againſt him the ſaid *J. G.* becauſe he ſays, that after the ſaid commitment of the ſaid *E. L.* to the ſaid priſon of the *Fleet*, under the cuſtody of the ſaid *J.* in execution for the damages aforeſaid, at the ſuit of the ſaid *W. C.* in form aforeſaid made, to wit, on the eighth day of *February* in the year of our Lord 1735, he the ſaid *E. L.* being then in the priſon of the *Fleet* aforeſaid in execution

Same plea by the warden of the Fleet.

for the damages aforeſaid under the cuſtody of the ſaid *J. G.* as aforeſaid, he the ſaid *E. L.* at *London* aforeſaid, within the pariſh of *St. Bridget*, otherwiſe *St. Brides*, in the ward of *Farrington Without*, then and there broke the ſaid priſon by force and arms, and out of the ſaid priſon, and out of the cuſtody of the ſaid *J. G.* againſt the will of the ſaid *J. G.* and without the knowledge of the ſaid *J. G.* into the pariſh of *St. Mary le Bow* in the ward of *Cheap*, *London*, aforeſaid, and to places to the ſaid *J. G.* unknown fled. *And* the ſaid *J. G.* further ſays, that before the day of exhibiting the ſaid bill, and before the ſaid *J. G.* had any notice of the ſaid eſcape, that is to ſay, the ſaid eighth day of *February* aforeſaid in the ſaid year of our Lord 1735, at *London* aforeſaid in the ſaid pariſh of *St. Bridget*, otherwiſe *St. Brides*, in the ward of *Farrington Without* aforeſaid, the ſaid *E. L.* into the priſon aforeſaid, without the knowledge of the ſaid *J. G.* returned, and continually after ſuch return hitherto the ſaid *E. L.* in the ſaid priſon under the cuſtody of the ſaid *J. G.* in execution for the damages aforeſaid, at the ſuit of the ſaid *W. C.* hath been detained, and is yet detained by the ſaid *J. G.* which ſaid eſcape of the ſaid *E. L.* out of the ſaid priſon, and out of the cuſtody of the ſaid *J. G.* ſo as aboveſaid made, is the ſame eſcape for which the ſaid *W. C.* hath above declared againſt him the ſaid *J. G.* and this the ſaid *J. G.* is ready to verify: Wherefore he prays judgment, if the ſaid *W. C.* ought

ought to have or maintain his ſaid action therefore againſt him the ſaid *J. G. &c.*

W. Hawkins.

And the ſaid *S.* by *T. O.* her attorney comes and defends the wrong and injury, when, *&c.* and ſaith, that the ſaid *W. P.* ought not to have or maintain his ſaid action againſt her, becauſe ſhe ſaith, that the ſaid *M. B.* in his life-time, to wit, on the ſixth day of *January* in the year of our Lord 1729, at *Weſtminſter* aforeſaid, by a certain writing obligatory ſealed with his ſeal, and then and there delivered as his deed for a true and juſt debt, acknowledged himſelf to be held and firmly bound to one *W. B.* eſq; in 276*l.* of lawful money of *Great Britain*, to be paid to the ſaid *W. B.* when he ſhould be thereunto afterwards required; which ſaid writing obligatory at the time of the death of the ſaid *M.* was in its full force and virtue, not ſatisfied, diſcharged or cancelled; whereupon the ſaid *W. B.* for recovering his ſaid debt after the death of the ſaid *M.* to wit, in this preſent term of *St. Michael* in the fourteenth year of the reign of our ſaid lord the king, in the court of our ſaid lord the king before Sir *J. W.* knt. and his companions, then juſtices of our ſaid lord the king of the bench at *Weſtminſter* aforeſaid, impleaded the ſaid *S.* upon the writing obligatory aforeſaid, as executrix of the laſt will and teſtament of the ſaid *M.* of a plea of debt for the ſaid 276*l.*

Plea by executrix of a bond given by her teſtator, and judgment thereon obtained, with plene adminiſtravit, in bar of the action brought by Q.

in which ſaid plea ſuch proceedings were had in the ſaid court of our ſaid lord the king of the bench, that afterwards, to wit, in this ſame *Michaelmas* term, the ſaid *W. B.* in the ſame court, by the conſideration of the ſame court, recovered againſt the ſaid *S.* as well the ſaid debt of 276 *l.* as 50 *s.* which were adjudged to the ſaid *W.* in the ſame court for his damages which he had ſuſtained by reaſon of the detaining the ſaid debt, to be levied of the goods and chattels which were of the ſaid *M.* at the time of his death in the hands of the ſaid *S.* to be adminiſtered, if ſhe had ſo much thereof in her hands to be adminiſtered; and if ſhe had not ſo much thereof in her hands to be adminiſtered, then the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *S.* whereof ſhe is convicted, as by the record of the ſaid judgment now remaining in the ſaid court of our ſaid lord the king of the bench at *Weſtminſter* aforeſaid more fully appears; which ſaid judgment ſo as aforeſaid had and obtained upon the ſaid writing obligatory, was ſo had and obtained for a true and juſt debt due and owing to the ſaid *W. B.* by the ſaid *M.* at the time of his death upon the writing obligatory aforeſaid, and the ſaid judgment yet remains in its full force and effect, not reverſed, annulled, diſcharged or ſatisfied. *And* the ſaid *S.* further ſaith, that ſhe hath fully adminiſtered all and ſingular the goods and chattels which were of the ſaid *M.* at the time of his death in her hands to be adminiſtered, except goods and chattels to the value of 5 *l.* and that ſhe has

has not, nor on the day of exhibiting the ſaid bill of the ſaid *W. P.* or ever after, had any goods or chattels which were of the ſaid *M.* at the time of his death in her hands to be adminiſtered, except goods and chattels to the value of the ſaid 5 *l.* which are liable towards the ſatisfaction of the money due upon the ſaid judgment here above mentioned; and this the ſaid *S.* is ready to verify: Wherefore ſhe prays judgment, if the ſaid *W. P.* ought to have or maintain his ſaid action againſt her, *&c.*

Tho. Deniſon.

And the ſaid *A.* by *T. H.* his attorney, comes and defends the force and injury, when, *&c.* and ſays, that the ſaid *B.* ought not to have or maintain his ſaid action againſt him, becauſe he ſays, that after the making of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned above ſuppoſed to be made, and before the day of exhibiting of the ſaid bill of the ſaid *B.* againſt him, to wit, on the tenth day of *May* in the thirteenth year of the reign of the lord the now king, at the pariſh aforeſaid in the ſaid county, the ſaid *B.* by his certain writing of releaſe indented, ſealed with the ſeal of the ſaid *B.* and now ſhewn here to the court of the ſaid lord the king, bearing date the ſame day and year, did remiſe, releaſe and for ever quit-claim unto the ſaid *A.* his heirs, executors and adminiſtrators, all and all manner of action and actions, cauſe and cauſes of action, ſuits, bills, bonds, obligations, debts, dues, duties,

Plea, a general releaſe.

duties, reckonings, accounts, ſum and ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, which againſt him the ſaid *A.* he the ſaid *B.* his heirs, executors or adminiſtrators, ſhould or might have, claim, challenge or demand for or by reaſon or means of any matter, cauſe or thing whatſoever, from the beginning of the world to the day of the date of the ſaid writing of releaſe, as by the ſaid writing of releaſe amongſt other things more fully appears; and this he is ready to verify: Wherefore he prays judgment, if the ſaid *B.* ought to have or maintain his ſaid action againſt him, *&c.*

W. Hayward.

Replication, non eſt factum.

And the ſaid *B.* ſaith, that he ought not, by any thing by the ſaid *A.* above in pleading alledged, to be barred from having or maintaining his ſaid action in this behalf againſt him, becauſe he ſaith, that he the ſaid *B.* did not, after the making the ſeveral promiſes and aſſumptions in the ſaid declaration mentioned, make ſuch indenture of releaſe as the ſaid *A.* hath above in pleading alledged; and this he prays may be inquired of by the country; and the ſaid *A.* doth ſo likewiſe.

Plea, a general releaſe.

And the ſaid *W.* by *N. T.* his attorney, comes and defends the force and injury, when, *&c.* and ſays, that the ſaid *A.* ought not to have or maintain her ſaid action thereof againſt him, becauſe he ſays, that after the making the

the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned above ſuppoſed to be made, and before the exhibiting of the ſaid bill of the ſaid *A.* to wit, on the fifteenth day of *April* in the fifteenth year of the reign of our lord the now king at *Ludlow* aforeſaid in the ſaid county, the ſaid *A* by her certain writing of releaſe ſealed with the ſeal of the ſaid *A.* and then and there made and duly executed by her, which ſaid writing of releaſe the ſaid *W.* brings here into court, the date whereof is the day and year laſt mentioned, for herſelf, her heirs, executors and adminiſtrators, did remiſe, releaſe and for ever quit-claim unto the ſaid *W.* his heirs, executors and adminiſtrators, all and all manner of action and actions, cauſe and cauſes of actions, ſuits, bills, bonds, writings obligatory, debts, dues, duties, reckonings, accounts, ſum and ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever both in law and in equity, or otherwiſe howſoever, which againſt him the ſaid *W.* ſhe ever had, then had, or which ſhe the ſaid *A.* her heirs, executors or adminiſtrators could, ſhould or might have, claim, challenge or demand, for or by reaſon or means of any act, matter cauſe or thing, from the beginning of the world to the day of the date of the ſaid writing of releaſe, as by the ſaid writing of releaſe amongſt other things more fully appears; and this he is ready to verify: Wherefore he prays judgment if the ſaid *A.* ought

to

to have or maintain her ſaid action thereof againſt him, &c.

D. Poole.

Replication, dureſs of imprisonment.

And the ſaid *A.* ſays, that ſhe by any thing above alledged by the ſaid *W.* in pleading ought not to be barred from having her action aforeſaid againſt him the ſaid *W.* becauſe ſhe ſaith, that ſhe the ſaid *A.* at the time of making the writing aforeſaid, was impriſoned by him the ſaid *W.* to wit, at *Ludlow* aforeſaid in the ſaid county, and was there detained in priſon until ſhe the ſaid *A.* by force and dureſs of that impriſonment, then and there, made the ſaid writing to the ſaid *W.* and this ſhe is ready to verify: Wherefore ſhe prays judgment and her damages by reaſon of the premiſſes to be adjudged to her, &c.

Fran. Rocke.

Rejoinder.

And the ſaid *W.* proteſting that the ſaid *A.* at the time of making of the writing aforeſaid, was not impriſoned as the ſaid *A.* has in and by her ſaid replication above ſuppoſed, for rejoinder the ſaid *W.* ſays, that the ſaid writing was not made by force and dureſs of impriſonment, as the ſaid *A.* has in her ſaid replication above alledged; and thereupon he puts himſelf upon the country, &c. Verdict for plaintiff.

Demurrer to a declaration.

And the ſaid *R.* in his own proper perſon comes and defends the wrong and injury, when,

when, &c. and ſaith, that the ſaid declaration in manner and form aforeſaid above made, and the matter therein contained are not ſufficient in law for the ſaid *E.* to have and maintain his ſaid action againſt the ſaid *R.* to which ſaid declaration the ſaid *R.* hath no need nor is he obliged by the law of the land to anſwer; and this he is ready to verify: Wherefore for want of a ſufficient declaration in this behalf, the ſaid *R.* prays judgment if the ſaid *E.* ought to have or maintain his ſaid action againſt him; and for cauſes of demurrer in law in this behalf the ſaid *R.* according to the form of the ſtatute in ſuch caſes lately made and provided, ſhews to the court here theſe cauſes following, that is to ſay, for this that it is not alledged in the ſaid declaration, that there is any record of commitment of the ſaid *W. A.* to the cuſtody of the ſaid *R.* as marſhal of the *Marſhalſea* of the ſaid lord the king before the king himſelf, nor is it alledged in the ſaid declaration, that any ſuch commitment of the ſaid *W. A.* appears or remains of record in the ſaid court of the lord the king before the king himſelf, and alſo for that the ſaid declaration is uncertain and wants form, &c. Cauſes.

R. Draper.

And the ſaid *E.* prayeth leave to imparle to the ſaid plea until *Saturday* next after three weeks from the day of *St. Michael*, and then to anſwer the ſame, &c. and it is granted, &c. and thereupon the ſame day is given to the Imparlance.

the parties aforeſaid, to come before our lord the king at *Weſtminſter*, at which day as well the ſaid *E.* doth come by his ſaid attorney, as the ſaid *R.* in his proper perſon. *And* the ſaid *E.* ſaith that notwithſtanding any thing by the ſaid *R.* above alledged, he ought not to be barred from having his ſaid action maintained againſt the ſaid *R.* becauſe he ſays that the ſaid declaration, and the matter therein contained, are good and ſufficient in law for him the ſaid *E.* to maintain his ſaid action againſt the ſaid *R.* which ſaid matter contained in the ſaid declaration, he the ſaid *E.* is ready to verify and prove in ſuch manner as the court ſhall think fit; and becauſe the ſaid *R.* hath made no anſwer to the ſaid declaration, nor in any wiſe denied the ſame, the ſaid *E.* prays judgment, and that his damages occaſioned by the premiſſes may be awarded to him. *But* becauſe the ſaid court of our ſaid ſovereign lord the king is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to be before our lord the king at *Weſtminſter* until *Friday* next after eight days of the purification of the bleſſed Virgin *Mary*, to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof, *&c.*

Joinder.

Continuance.

John Stracy.

And

And the ſaid *J.* by *A. B.* his attorney, comes and defends the force and injury, when, and ſo forth, and as to the coming with force and arms, and whatever is againſt the peace of the ſaid lord the king, ſays, that he is not thereof guilty; and hereupon he puts himſelf upon the country, and the ſaid *W.* does ſo likewiſe; and as to the reſidue of the ſaid treſpaſs above ſuppoſed to be done, the ſaid *J.* ſays, that the ſaid *W.* ought not therefore to have or maintain his ſaid action againſt him, becauſe he ſays, that *C. C.* eſq; long before the ſaid firſt time, when, *&c.* was ſeiſed in his demeſne as of fee of and in a certain meſſuage, and a certain meadow called with the appurtenances, ſituate, lying and being in the pariſh aforeſaid; and the ſaid *C.* and all thoſe whoſe eſtate he had and has in his ſaid meſſuage and meadow called with the appurtenances, from time whereof the memory of man is not to the contrary, have had and uſed, and have been uſed and accuſtomed, and of right ought to have and uſe a certain way as well on foot as on horſeback, as for their carts and carriages, and for the driving of their cattle from the ſaid meſſuage, with the appurtenances, into, through and over the ſaid cloſe called *D.* field, in which, *&c.* into the ſaid meadow called and back again from the ſaid meadow called into, through and over the ſaid cloſe called *D.* field, in which, *&c.* in the ſaid way there to the ſaid meſſuage, with the appur-

Plea in treſpaſs, a juſtification as having a right to and uſing a way through the locus in quo, &c.

appurtenances, every year, at all times of the year, when and as often as occaſion required, for the uſe and enjoyment of the ſaid meadow called and the perception of the profits thereof; and the ſaid *C.* being ſo ſeiſed of the ſaid meſſuage and meadow called with the appurtenances as aforeſaid, he the ſaid *C.* long before the ſaid firſt time, when, *&c.* to wit, on the twenty-ſixth day of *March* in the year of our Lord 1738, at the pariſh aforeſaid, demiſed the ſaid meſſuage and meadow called with the appurtenances, to the ſaid *J. J.* to have and to hold to the ſaid *J.* from the feaſt of the annunciation of the bleſſed Virgin *Mary* then laſt paſt, for and during one whole year, and from the end of that year from year to year, at the will of the ſaid *C.* and *J. J.* by virtue of which ſaid demiſe he the ſaid *J. J.* entered into the ſaid demiſed meſſuage, and meadow called with the appurtenances, and from thenceforth hitherto has been and ſtill is poſſeſſed thereof, and being ſo poſſeſſed thereof, he the ſaid *J. J.* on the ſaid tenth day of *December* in the ſaid thirteenth year of the reign of our ſaid lord the king, and at divers other days and times between that day and the ſaid 15th day of *January* in the ſaid fourteenth year of the reign of our ſaid lord the king, went on foot with his ſaid cattle in the ſaid declaration mentioned, and with his ſaid carts and carriages therein alſo mentioned, drawn by the ſaid horſes, mares, geldings and oxen from

from the ſaid meſſuage with the appurtenances, into, through and over the ſaid cloſe called *D.* field, in which, *&c.* in the ſaid way there into his ſaid meadow called
and back again from his ſaid meadow called into, through and over the ſaid cloſe, in which, *&c.* in the ſaid way there to his ſaid meſſuage, with the appurtenances, for the uſe and enjoyment of the ſaid meadow called and for the perception of the profits thereof, as it was lawful for him to do; and in ſo doing he the ſaid *J. J.* neceſſarily trod down and conſumed with his feet in walking, a little of the ſaid graſs and corn then growing in the ſaid way in the ſaid cloſe, in which, *&c.* and broke up, ſubverted, ſpoiled and conſumed with the wheels of the ſaid carts and carriages, the ſoil of the ſaid cloſe, in which, *&c.* in the ſaid way there, and the ſaid other graſs and corn growing in the ſaid way there, and the ſaid cattle in their paſſage through the ſaid cloſe, in which, *&c.* on the occaſion aforeſaid, did neceſſarily tread down with their feet a little of the ſaid graſs and corn then growing in the ſaid way in the ſaid cloſe, in which, *&c.* and againſt the will of the ſaid *J. J.* ſnatched and eat up and conſumed a little more of the ſaid graſs and corn growing in the ſaid way there and on the ſides thereof; and the ſaid *J. J.* in the ſaid uſe and enjoyment of his ſaid way in and through the ſaid cloſe, in which, *&c.* did as little damage to the ſaid *W.* as he could, which ſaid breaking and entering of the ſaid

cloſe, in which, &c. and the treading down and conſuming with his feet in walking the ſaid graſs and corn there growing, and the eating up, treading down and conſuming with the ſaid cattle the ſaid other graſs and corn there growing, and the breaking up, ſubverting, ſpoiling and conſuming with the ſaid wheels of carts and carriages the ſaid ſoil of the ſaid cloſe, in which, &c. and the ſaid other graſs and corn there likewiſe growing in manner aforeſaid, and for the cauſe aforeſaid done, are the reſidue of the ſaid treſpaſs, of which the ſaid *W.* hath above complained againſt him; and this he is ready to verify: Wherefore he prays judgment, if the ſaid *W.* ought therefore to have or maintain his ſaid action againſt him, &c.

Replication. *And* the ſaid *W.* as to the plea of the ſaid *J. J.* as to the reſidue of the ſaid treſpaſs by him done as aforeſaid, by him above pleaded in bar, ſays, that by reaſon of any thing above pleaded by the ſaid *J. J.* in that reſpect he ought not to be barred from having his ſaid action therefore againſt him, becauſe he ſays, that the ſaid *J. J.* on the ſaid tenth day of *December* in the ſaid thirteenth year of the reign of the ſaid lord the king, and on divers other days and times between that day and the ſaid fifteenth day of *January* in the ſaid fourteenth year of the reign of the ſaid lord the king, broke and entered the ſaid cloſe of the ſaid *W.* in which, &c. and trod down and conſumed with his feet in walking the ſaid graſs and corn there growing,

ing, and eat up, trod down and conſumed with the ſaid cattle the ſaid other graſs and corn there growing, and broke up, ſubverted, ſpoiled and conſumed with the wheels of carts and carriages the ſaid ſoil of the ſaid cloſe, and the ſaid other graſs and corn there growing, as the ſaid *W.* hath thereof above complained againſt him in his own wrong; without this, that the ſaid *C.* and all thoſe whoſe eſtate he had and has in his ſaid meſſuage and meadow, called with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and uſed, and have been uſed and accuſtomed, and of right ought to have and uſe a certain way as well on foot as on horſeback, as for their carts and carriages, and for the driving of their cattle from the ſaid meſſuage, with the appurtenances, into, through and over the ſaid cloſe called *D.* field, in which, *&c.* into the ſaid meadow called and back again from the ſaid meadow called into, through and over the ſaid cloſe called *D.* field, in which, *&c.* into the ſaid way there to the ſaid meſſuage, with the appurtenances, every year, at all times of the year, when and as often as occaſion required, for the uſe and enjoyment of the ſaid meadow called and the perception of the profits thereof, in manner and form as the ſaid *J. J.* hath by the ſaid plea in that reſpect above alledged; and this he is ready to verify: Wherefore ſeeing the ſaid *J. J.* hath above

acknowledged the reſidue of the ſaid treſpaſs by him done as aforeſaid, the ſaid *W.* prays judgment and his damages by reaſon thereof to be adjudged to him, *&c.*

Rejoinder. *And* the ſaid *J. J.* ſays, as before, that the ſaid *C.* and all thoſe whoſe eſtate he had and has in his ſaid meſſuage and meadow called with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and uſed, and have been uſed and accuſtomed, and of right ought to have and uſe a certain way as well on foot as on horſeback, as for their carts and carriages, and for the driving of the cattle from the ſaid meſſuage, with the appurtenances, into, through and over the ſaid cloſe called *D.* field, in which, *&c.* into the ſaid meadow called and back again from the ſaid meadow called into, through and over the ſaid cloſe called *D.* field in which, *&c.* in the ſaid way there to the ſaid meſſuage, with the appurtenances, every year, at all times of the year, when and as often as occaſion required, for the uſe and enjoyment of the ſaid meadow called and the perception of the profits thereof, in manner and form as the ſaid *J. J.* hath by his ſaid plea in that reſpect above alledged; and hereupon he puts himſelf upon the country; and the ſaid *W.* does ſo likewiſe: Therefore as well to try this iſſue, as the ſaid other iſſue between the parties above joined, let, *&c.*

And

And the ſaid *E.* by *A. B.* her attorney, comes and defends the wrong and injury, when, &c. and ſaith, that the ſaid *M.* ought not to have or maintain her ſaid action againſt her, becauſe ſhe ſays, that the ſaid *W.* in his life-time, to wit, on the ſixteenth day of *October* in the year of our Lord 1725, at *Weſtminſter* aforeſaid, by his deed, which the ſaid *E.* ſealed with the ſeal of the ſaid *W.* brings here into court, bearing date the ſame day and year, aſſigned the ſaid demiſed premiſſes, with the appurtenances, and all his ſaid eſtate, right, title, intereſt and term of years therein then to come and unexpired, to the ſaid *H. H.* by virtue of which aſſignment he the ſaid *H.* entered into the ſaid demiſed premiſſes, with the appurtenances, and from thenceforth hitherto has been and ſtill is poſſeſſed thereof; and the ſaid *E.* further ſays, that the ſaid *J.* afterwards, to wit, on the twenty-fifth day of *December* in the year laſt aforeſaid, at *Weſtminſter* aforeſaid, had notice of the ſaid aſſignment, and then and there conſented and agreed to the ſame, and afterwards, to wit, on the feaſt of the annunciation of the bleſſed Virgin *Mary* in the year of our Lord 1726, at *Weſtminſter* aforeſaid, received and accepted of the ſaid *H.* 15*l.* of the rent aforeſaid for half a year of the ſaid term, which became due from the ſaid *H.* to the ſaid *J.* after the ſaid aſſignment ſo made to the ſaid *H.* as aforeſaid; and this ſhe is ready to verify: Wherefore ſhe prays judgment,

Plea to an action of covenant brought by the executrix of the leſſor againſt the executrix of the leſſee, that the leſſee had aſſigned the premiſſes, and the leſſor had notice of it, and accepted rent of the aſſignee.

ment, if the ſaid *M.* ought to have or maintain her ſaid action againſt her, *&c.*

P. Ward.

Demurrer. *And* the ſaid *M.* ſays, that ſhe by any thing by the ſaid *E.* above alledged in pleading ought not to be barred from having her ſaid action againſt the ſaid *E.* becauſe the ſaid *M.* ſays, that the ſaid plea, and the matter therein contained, are not ſufficient in law to bar the ſaid *M.* from having her ſaid action againſt the ſaid *E.* to which ſaid plea in manner and form aforeſaid above pleaded, and the matter therein contained, the ſaid *M.* hath no need, nor is ſhe bound by the law of the land in any manner to anſwer; and this ſhe is ready to verify: Wherefore, for want of a ſufficient anſwer in this behalf, ſhe the ſaid *M.* prays judgment, and that her damages by reaſon of the breaking of the covenant aforeſaid may be adjudged to her, *&c.*

R. Draper.

Joinder. *And* the ſaid *E.* ſaith, that the ſaid plea aforeſaid, in manner and form by her the ſaid *E.* above pleaded, and the matter in the ſame contained, are good and ſufficient in law to bar the ſaid *M.* from having her action aforeſaid againſt her the ſaid *E.* which ſaid plea, and the matter therein contained, the ſaid *E.* is ready to verify and prove, as to the court ſhall ſeem meet; and becauſe the ſaid *M.* hath

hath not anſwered the ſaid plea, nor hitherto hath any way gainſaid the ſame, the ſaid *E.* as before prays judgment, and that the ſaid *M.* may be barred from having her ſaid action againſt her. But becauſe the court of our ſaid lord the king now here is not yet adviſed about giving judgment of and upon the premiſſes, day is therefore given to the ſaid parties to be before our lord the king at *Weſtminſter*, until next after to hear judgment of and upon the premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof.

Judgment for the plaintiff. 1 *Saund.* 240. *Cro. Car.* 188. *Cro. Jac.* 521, 557. 2 *Saund.* 380.

Plea by an executrix, a bond entered into by her teſtator, and judgment thereon againſt her.

And the ſaid *E.* by *J. C.* her attorney, comes and defends the force and injury, when, *&c.* and ſays, that the aforeſaid *W. W. W.* ought not to have his action aforeſaid againſt her, becauſe ſhe ſays, that the aforeſaid *E.* in his life-time, to wit, on the twenty-firſt day of *Auguſt* in the year of our Lord 1729, at *Weſtminſter* in the county aforeſaid, by his certain writing obligatory granted himſelf to be bound unto one *H. B.* eſq; in 1000 *l.* to be paid to the ſame *H. B.* when he ſhould be thereunto required, which ſaid writing obligatory was made by the ſaid *E.* in his life-time to the aforeſaid *H.* for a true and juſt debt of the ſaid *E.* and afterwards the ſaid *E.* at *Weſtminſter* aforeſaid died, the ſaid debt or any part thereof not being paid or ſatisfied at the

time of the death of the ſaid *E.* for which the ſaid *H.* after the death of the ſaid *E.* the ſaid 1000*l.* being ſtill unpaid, to wit, in *Trinity* term in the ſixth and ſeventh years of the reign of the ſaid lord the now king in his ſaid majeſty's court of Common Bench here, to wit, at *Weſtminſter*, before Sir *R. E.* knt. and his companions, the then juſtices of our ſaid lord the now king of the ſaid court of Common Bench, impleaded her the ſaid *E.* by the name of *E. W.* late of the pariſh of *St. Martin in the Fields* in the county of *Middleſex*, widow and executrix of the laſt will of *E. W.* lately called *E. W.* of the pariſh of *St. Martin in the Fields* in the county of *Middleſex*, periwig-maker, in a plea of debt for the aforeſaid 1000*l.* on the writing aforeſaid, in which plea ſuch proceedings were had, that afterwards, to wit, in the ſame *Trinity* term, he the ſaid *H.* by the conſideration of the ſame court, recovered againſt the aforeſaid *E.* as well his ſaid debt of 1000*l.* as 7*l.* 10*s.* which were adjudged to him the ſaid *H.* in the ſame court for his damages which he had by the occaſion of detaining that debt, to be levied of the goods and chattels which were the aforeſaid *E.*'s at the time of his death in the hands of her the aforeſaid *E.* to be adminiſtered, if ſhe the ſaid *E.* had ſo many goods and chattels which were the ſaid *E.*'s at the time of his death in her hands to be adminiſtered, and if ſhe had not, then the damages aforeſaid to be levied of the proper goods and chattels of her the ſaid *E.* where-

of

of ſhe is convicted, as by the record and proceedings thereof remaining in the ſame court may more fully appear; which ſaid judgment ſtill remains in its full force and virtue, not reverſed, annulled, or any ways ſatisfied. *And* the aforeſaid *E.* further ſays, that ſhe hath fully adminiſtered all the goods and chattels which were the ſaid *E.*'s at the time of his death in her hands to be adminiſtered, except goods and chattels to the value of 5 *l.* and that ſhe hath not, nor on the day of obtaining the original writ of him the ſaid *W. W. W.* aforeſaid, or at any time ſince had any goods or chattels which were the aforeſaid *E.*'s at the time of his death in the hands of her the ſaid *E.* to be adminiſtered, except the ſaid goods and chattels, to the value of the ſaid 5 *l.* which are not ſufficient to pay the ſaid 1000 *l.* and which are charged and bound towards the payment of the ſame; and this ſhe is ready to verify: Whereupon ſhe prays judgment, if the aforeſaid *W. W. W.* ought to have his action aforeſaid againſt her, with this, that the aforeſaid *E.* doth aver, that the aforeſaid *E.* in the ſaid writing obligatory, and in the record of the judgment aforeſaid pleaded named, are one and the ſame perſon, and not another or divers, and that the aforeſaid *E.* the now defendant, and the ſaid *E.* in the ſame record of the judgment aforeſaid named, are one and the ſame perſon, and not another or divers, *&c.*

W. Chapple.

And

Replication that the bond was not for a juſt debt, but upon condition, &c.
2 Saund. 50.
3 Cro. 462.
Contra, Lut. 111.
4 Co. 109.
Aſhton and Sherman.
Carth. 429.
Salk. 298.
Comb. 444.
Caſes B. R. 153.
Holt 308.
Lill. Ent. 158.

And the ſaid *W. W. W.* ſaith, that he by any thing before alledged ought not to be precluded from having his action aforeſaid againſt the aforeſaid *E.* becauſe he ſays, that true it is that the ſaid *E.* in his life-time became bound to the ſaid *H. B.* in the ſaid writing obligatory in the ſaid plea before mentioned, and that after the death of the ſaid *E.* the ſaid judgment was had and obtained by the ſaid *H.* againſt the ſaid *E.* as the ſaid *E.* hath before alledged; but the ſaid *W. W. W.* further ſaith, that the ſaid writing obligatory was not made by the ſaid *E.* in his life-time to the ſaid *H. B.* for a true and juſt debt of the ſaid *E.* as the ſaid *E.* in and by her plea aforeſaid hath alledged; but that the ſame was made by the ſaid *E.* in his life-time, under a condition thereunto written, that if the ſaid *E.* did and ſhould permit and ſuffer the ſaid *E.* notwithſtanding coverture, in caſe ſhe ſhould happen to die without iſſue of the ſaid *E.* by any deed or writing, deeds or writings, or by her laſt will and teſtament in writing executed in the preſence of two or more credible witneſſes, to give and diſpoſe of the ſum of 500*l.* to any perſon or perſons as ſhe ſhould think fit; and alſo if the ſaid *E.* his heirs, executors and adminiſtrators, did and ſhould well and truly pay, or cauſe to be paid, the ſum of 500*l.* to ſuch perſon or perſons as the ſaid *E.* ſhould think fit to appoint, give or diſpoſe the ſame at the day of the death or deceaſe of the ſaid *E.* then

then the ſaid obligation ſhould be void and of none effect. And the ſaid *W. W. W.* further ſaith, that the ſaid *E.* on the day of obtaining the original writ of him the ſaid *W. W. W.* that is to ſay, the ſecond day of *October* in the year of our Lord 1733, had divers goods and chattels which were the aforeſaid *E.*'s at the time of his death in the hands of her the ſaid *E.* to be adminiſtered, ſufficient to ſatisfy the ſaid *W. W. W.* his ſaid debt, and more, that is to ſay, at *Weſtminſter* aforeſaid in the county aforeſaid; and this he is ready to verify: Whereupon he prayeth judgment and his ſaid debt, together with his damages by occaſion of the detaining of the ſame debt, to be adjudged, *&c.*

R. Wynne.

And the ſaid *E.* ſaith, that the ſaid plea of the ſaid *W. W. W.* above by replying pleaded, and the matter in the ſame contained, are not ſufficient in law to maintain the ſaid *W. W. W.* to have his ſaid action againſt her, and that ſhe is not conſtrained, neither is in any ways bound by the law of the land, to anſwer to the ſaid plea; and this ſhe is ready to verify: Therefore, for want of a ſufficient plea in this behalf, ſhe prays judgment, and that the ſaid *W. W. W.* may be precluded from having his ſaid action againſt her, *&c.* and for cauſes of demurrer in law in this behalf, ſhe the ſaid *E.* according to the form of the ſtatute in ſuch caſe lately Demurrer.

lately made and provided, doth ſhew and demonſtrate here to the court theſe cauſes following, to wit, For that the ſaid plea is double, relying on ſeveral diſtinct matters that are reſpectively iſſuable, more particularly in alledging that the ſaid *E.* hath ſuffered the ſaid judgment to remain in force, with an intention to defraud the ſaid *W. W. W.* of his ſaid debt, that is to ſay, at *Weſtminſter* in the ſaid county of *Middleſex*, and alſo that the ſaid *E.* on the day of obtaining the original writ of him the ſaid *W. W. W.* that is to ſay, on the ſecond day of *October* 1733, had divers goods and chattels which were the aforeſaid *E.*'s at the time of his death in the hands of her the ſaid *E.* to be adminiſtered, ſufficient to ſatisfy the ſaid *W. W. W.* his ſaid debt, and more, that is to ſay, at *Weſtminſter* aforeſaid, in the county aforeſaid, and for that the ſaid *W. W. W.* doth not alledge or ſhew that the ſaid *E.* had or hath more aſſets in her hands than will ſatisfy the above-mentioned judgment or the money due thereon, and for that the matter laſt offered in iſſue, is altogether immaterial, uncertain, *&c.*

W. Chapple.

Joinder.

And the ſaid *W. W. W.* ſaith, that ſince he hath in his replication aboveſaid alledged matter in law ſufficient to enable him the ſaid *W. W. W.* to have his action aforeſaid againſt the ſaid *E.* which he is ready to verify; which ſaid matter the ſaid *E.* doth not deny,

deny, nor give any manner of anſwer thereunto, but doth altogether refuſe to admit that averment, he the ſaid *W. W. W.* as before, prays jugdment, together with his damages, by reaſon of his detaining of his ſaid debt, to be adjudged to him, *&c.* And becauſe the juſtices here will adviſe themſelves of and concerning the premiſſes before they give judgment thereupon, a day is given to the parties aforeſaid here, until

Continuance.

to hear their judgment thereupon, for that the ſame juſtices here are not, *&c.* at which day cometh here as well the ſaid *W. W. W.* as the ſaid *E.* by their attornies aforeſaid, and thereupon the premiſſes being ſeen and fully underſtood by the juſtices here, and mature deliberation being thereupon had, for that it ſeems to the ſame juſtices here, that the aforeſaid plea of the ſaid *W. W. W.* above by replying pleaded, and the matter in the ſame contained, are ſufficient in law to maintain the ſaid *W. W. W.* to have his ſaid action againſt the ſame *E.* as the ſame *W. W. W.* above hath alledged: *Therefore* it is conſidered, that the ſaid *W. W. W.* do recover againſt the ſaid *E.* his ſaid debt and his damages by reaſon of the detaining of that debt to 11 *l.* adjudged by the court here to the ſaid *W. W. W.* with his conſent, to be levied of the goods and chattels which were of the aforeſaid *E.* at the time of his death in the hands of the ſaid *E.* to be adminiſtered, if ſhe hath ſo much thereof in her hands to be adminiſtered; and if ſhe hath not ſo much thereof

Judgment for plaintiff on demurrer.

in her hands to be adminiſtered, then the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *E.* And the ſaid *E.* in mercy, *&c.*

Plea, ſon aſſault demeſne.

And the ſaid *T. K.* by *M. P.* his attorney, comes and defends the force and injury, when, *&c.* And as to the coming with force and arms, and whatever elſe is againſt the peace of our ſaid lord the now king, he the ſaid *T.* ſaith he is not guilty thereof; and of this he puts himſelf upon the country; and the aforeſaid *A. R.* likewiſe: And as to the reſidue of the ſaid treſpaſs above ſuppoſed to be done, the ſaid *T.* ſaith, that the ſaid *A. R.* ought not to have or maintain her action therefore againſt him, becauſe he ſaith, that the ſaid *A.* at the time when the ſaid treſpaſs is above ſuppoſed to be done, at the ſaid pariſh of *St. Anne* within the liberty of *Weſtminſter* in the county of *Middleſex* aforeſaid, with force and arms, *&c.* made an aſſault upon him the ſaid *T.* and would then and there have beat, wounded and evilly treated him the ſaid *T.* if he the ſaid *T.* had not then and there forthwith defended himſelf againſt the ſaid *A.* and ſo the ſaid *T.* ſaith, that if any miſchief or damage then and there happened to the ſaid *A.* it was occaſioned by the ſaid aſſault made by her the ſaid *A.* and in the defence of him the ſaid *T.* and this the ſaid *T.* is ready to verify: Wherefore he prays judgment, if the aforeſaid *A.* ought to have or maintain her action aforeſaid againſt him, *&c.*

And

And the ſaid *T. D.* by —— his attorney, comes and defends the force and injury, when, *&c.* and ſays, that the ſaid *M.* ought not to have or maintain her ſaid action againſt him, becauſe as to the ſaid firſt promiſe, and as to 6 *d.* 15 *s.* 6 *d.* parcel of the ſaid 10 *l.* in the ſaid ſecond promiſe mentioned, and alſo as to the ſaid third promiſe he ſays, that he did not undertake in manner and form as the ſaid *M.* above complains thereof againſt him; and of this, *&c.* and as to 3 *l.* 4 *s.* 6 *d.* reſidue of the ſaid 10 *l.* in the ſaid ſecond promiſe mentioned, the ſaid *T. D.* ſays, that he, after the death of the ſaid *T. C.* and after the committing the ſaid letters of adminiſtration to the ſaid *M.* and before the day of exhibiting the bill of the ſaid *M.* to wit, on the day of in the year of our Lord at aforeſaid, offered to pay to the ſaid *M.* the ſaid 3 *l.* 4 *s.* 6 *d.* which ſaid 3 *l.* 4 *s.* 6 *d.* the ſaid *M.* then and there refuſed to receive. And the ſaid *T. D.* further ſays, that he always afterwards hitherto was, and ſtill is ready to pay to the ſaid *M.* the ſaid 3 *l.* 4 *s.* 6 *d.* and brings the ſame here into court ready to be paid to the ſaid *M.* if the ſaid *M.* will receive the ſame: and this, *&c.* Wherefore, *&c.*

Plea, as to the firſt, part of the ſecond, and as to the third promiſe, non aſſumpſit.

As to the reſidue a tender.

And the ſaid *W.* by *G. I* his attorney, comes and defends the force and injury, when, *&c.* and ſays, that the ſaid *J.* ought not to have his ſaid action thereupon againſt him, becauſe,

Plea, payment to a bill obligatory according to the ſtatute.

becauſe, according to the form of the ſtatute in ſuch caſe lately made and provided, the ſaid *W.* ſays, that he the ſaid *W. B.* in the ſaid bill obligatory named, before the ſuing out the ſaid original writ of the ſaid *J. B.* at *Huſh Cham Flower* aforeſaid, paid to the ſaid *J.* the ſaid ten pounds and eighteen ſhillings in the ſaid bill obligatory above mentioned, and all intereſt therefore due unto ſuch payment thereof; and this he is ready to verify: Wherefore he prays judgment if the ſaid *J. B.* ought to have his ſaid action thereupon againſt him, *&c.*

Plea, ſolvit ad diem to a bond.

And the ſaid *A.* by ——— his attorney, comes and defends the force and injury, when, *&c.* and prays oyer of the ſaid writing obligatory; and it is read to him, *&c.* And he alſo prays oyer of the condition of the ſaid writing obligatory; and it is read to him in theſe words, to wit, Which being read and heard, the ſaid *A.* ſays, that the ſaid *A.* ought not to have or maintain her ſaid action thereupon againſt him, becauſe he ſays, that he the ſaid *A.* paid to the ſaid *A.* upon the thirteenth day of *September* in the ſaid condition above ſpecified the ſaid two hundred and ſix pounds, which he and the ſaid *H.* and *A.* or any of them, ought to have paid to the ſaid *A.* upon that day, according to the form and effect of the ſaid condition, to wit, in the then dwelling-houſe of the ſaid *A. M.* ſituate in the pariſh of *St. Margaret Lothbury, London,* in the ward of *Coleman-ſtreet*

ſtreet there; and this he is ready to verify: Wherefore he prays judgment if the ſaid *A.* ought to have or maintain her ſaid action thereupon againſt him, *&c.*

And the ſaid *A.* ſays, that ſhe by any thing by the ſaid *A.* above by pleading alledged ought not to be barred from having her ſaid action thereupon againſt him the ſaid *A.* becauſe ſhe ſays, that the ſaid *A.* did not pay to her the ſaid *A.* upon the ſaid thirteenth day of *September* in the ſaid condition above ſpecified the ſaid two hundred and ſix pounds which he and the ſaid *H.* and *A.* or any of them, ought to have paid to the ſaid *A.* upon that day, according to the form and effect of the ſaid condition, in manner and form as the ſaid *A.* has above by pleading alledged: And this ſhe prays may be inquired of by the country: *And* the ſaid *A.* does ſo likewiſe. Iſſue. Replication non ſolvit.

And the ſaid *J.* ſaith, that he by any thing before alledged by the ſaid *W.* in pleading ought not to be barred from having his aforeſaid action againſt the ſaid *W.* becauſe he ſays, that he the ſaid *J.* after the making the ſaid ſeveral promiſes and undertakings, to wit, in *Hilary* term in the thirteenth year of the reign of his late majeſty *George* the firſt, late king of *Great Britain*, *&c.* for the reco- Replication to a plea of non aſſ. infra ſex annos, that the plaintiff ſued out a bill of Middleſex, with continuance, by vic' non miſit breve, to the

time of appearance. Carthew 144. Elſtob executor of Jane Elſtob v. Thorowood. 1 R. Raym 283. 1 Salk. 393. 1 R. Raym. 432, 433. 2 Vent. 254. Stile 401. 1 Sid. 228. Lilly's Ent. 105. A latitat ſued out, &c.

Lilly's Ent. 32.

very of his damages occaſioned by the not performing the ſeveral promiſes and undertakings aforeſaid, ſued out of his ſaid late majeſty's court before the ſaid late king, the ſaid court being then at *Weſtminſter* in the ſaid county of *Middleſex*, a certain precept of the ſaid late king, called a bill of *Middleſex*, againſt the ſaid *W.* directed to the then ſheriff of *Middleſex*, by which ſaid precept the ſaid late king commanded the ſaid then ſheriff, that he ſhould take the ſaid *W.* if, &c. and him ſafely, &c. ſo that the ſaid then ſheriff might have his body before our lord the ſaid late king at *Weſtminſter* aforeſaid, on *Monday* next after the octave of the purification of the Bleſſed Virgin *Mary* then next enſuing, to anſwer to the ſaid *J.* on a plea of treſpaſs, and alſo to a bill of the ſaid *J.* againſt the ſaid *W.* for two hundred pounds, on undertakings, according to the cuſtom of the court of the ſaid late king before the ſaid king to be exhibited, and that the ſaid ſheriff ſhould then have there that precept, which ſaid precept was ſo proſecuted by the ſaid *J.* againſt the ſaid *W.* with intent that the ſaid *W.* might by virtue thereof be taken and arreſted by his body to appear before his ſaid late majeſty at *Weſtminſter* at the return of the ſaid precept, and that on ſuch appearance the ſaid *J.* might exhibit his bill againſt the ſaid *W.* in his ſaid late majeſty's court before the ſaid late king, in a plea of treſpaſs on the caſe for not performing the ſaid ſeveral promiſes and undertakings mentioned in the aboveſaid declaration of the ſaid

J.

J. in order to recover his damages occaſioned by the not performing thereof, and might thereupon recover thoſe damages againſt the ſaid *W.* At which day, to wit, *Monday* next after the octave of the purification of the Bleſſed Virgin *Mary*, before the ſaid late king at *Weſtminſter* aforeſaid, the ſaid *J.* came in his own perſon, and offered himſelf againſt the ſaid *W.* on the aforeſaid plea and bill: And the ſaid ſheriff, to wit, Sir *J. L.* knt. and *W. O.* eſq; then ſheriff of the county of *Middleſex*, returned that the ſaid *W.* was not found in his bailiwic, and the ſaid *W.* did not come: Therefore, as before, the ſheriff was commanded, that he ſhould take the ſaid *W.* if, *&c.* and him ſafely, *&c.* ſo that he might have his body before the ſaid late king at *Weſtminſter* aforeſaid on *Wedneſday* next after fifteen days from the day of *Eaſter* then next enſuing, to anſwer to the ſaid *J.* on his plea and bill aforeſaid. The ſame day was given to the ſaid *J.* at the ſame place: At which day, before the ſaid late king at *Weſtminſter* aforeſaid, the ſaid *J.* came in his own perſon, and offered himſelf againſt the ſaid *W.* on the plea and bill aforeſaid; and the ſheriff did not return the ſaid precept, nor did he do any thing thereupon; and the ſaid *W.* did not come: Therefore, as before, the ſheriff was commanded, that he ſhould take the ſaid *W.* if, *&c.* and him ſafely, *&c.* ſo that he might have his body before the ſaid late king at *Weſtminſter* aforeſaid, on *Friday* next after the morrow of the Holy *Trinity* then next enſuing,

ing, to anſwer to the ſaid *J.* on the plea and bill aforeſaid: The ſame day was given to the ſaid *J.* at the ſame place: At which day before the ſaid late king at *Weſtminſter* aforeſaid the ſaid *J.* came in his own perſon, and offered himſelf againſt the ſaid *W.* on the plea and bill aforeſaid; and the ſaid ſheriff did not return the ſaid precept, nor did he do any thing thereupon; and the ſaid *W.* did not come: Therefore, as before, the ſheriff was commanded that he ſhould take the ſaid *W.* if, *&c.* and him ſafely, *&c.* ſo that he might have his body before the ſaid late king at *Weſtminſter* aforeſaid;* on *Monday* next after three weeks from the day of *St. Michael* then next enſuing, to anſwer to the ſaid *J.* on the plea and bill aforeſaid: The ſame day was given to the ſaid *J.* at the ſame place: Before which day, to wit, on the eleventh day of *June* in the year of our Lord one thouſand ſeven hundred and twenty-ſeven, the ſaid king *George* the firſt departed this life, to wit, at *Weſtminſter* aforeſaid: At which day, to wit, the ſaid *Monday* next after three weeks from the day of *St. Michael*, before our lord *George* the ſecond, now king of *Great Britain*, *&c.* at *Weſtminſter* aforeſaid, the ſaid *J.* came in his own perſon, and offered him againſt the ſaid *W.* on the plea and bill aforeſaid; and the ſheriff did not return the ſaid precept, nor did he do any thing thereupon; and the ſaid *W.*

Demiſe le roy.

* No ſuch return now. See *Vol.* 1. *p.* —.

did

did not come. [*Et ſic de cæteris*, to the proceſs the defendant appeared on; the award of which follows.] Therefore, as before, the ſaid ſheriff was commanded that he ſhould take the ſaid *W.* if, *&c.* and him ſafely, *&c.* ſo that he might have his body before our ſaid lord the king at *Weſtminſter* aforeſaid on *Wedneſday* next after three weeks from the day of *St. Michael* next enſuing, to anſwer to the ſaid *J.* on the plea and bill aforeſaid: The ſame day was given to the ſaid *J.* at the ſame place: At which day before our ſaid lord the king at *Weſtminſter* aforeſaid came as well the ſaid *J.* by his attorney, as the ſaid *W.* by his attorney, and appeared in the ſaid court here, according to the cuſtom of the ſaid court, to anſwer the ſaid *J.* on the plea and bill aforeſaid; and thereupon the ſaid *J.* upon the ſaid appearance of the ſaid *W.* then and there in the ſaid court here exhibited his ſaid bill againſt the ſaid *W.* declaring againſt him in the manner aforeſaid, as by the * record and proceedings now remaining in his ſaid majeſty's court before our ſaid lord the king at *Weſtminſter* aforeſaid may more fully appear: And the ſaid *J.* further ſaith, that the ſaid *W.* within ſix years

Defendant appears.

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* *The plaintiff may reply a* latitat *ſued out, and continue it down by* reaſon that the ſheriff hath not ſent his writ, *without concluding*, as appears by the record; *for the* latitat *roll is only for the private uſe of the court, and no record.* Bottle *v.* Wood, 2 Keb. Rep. 46.

next before the iſſuing out the ſaid precept firſt abovementioned at *Weſtminſter* aforeſaid, took upon himſelf in manner and form as the ſaid *J.* above complains againſt him; and this he is ready to verify: Wherefore he prays judgment and his damages, by reaſon of the not performing the ſaid promiſes and undertakings, to be adjudged to him.

Rejoinder nul tiel record.

And the ſaid *W.* as before, ſaith, that the ſaid *J.* by any thing by him above alledged in replying ought not to have or maintain his ſaid action againſt him the ſaid *W.* becauſe he ſays, that there is not any ſuch record of a precept in the ſaid replication of the ſaid *J.* firſt above-mentioned, and proceeding thereof affiled, or now remaining of record in his ſaid preſent majeſty's court before our ſaid lord the king at *Weſtminſter*, as the ſaid *J.* in pleading by way of reply hath above alledged; and this the ſaid *W.* is ready to verify: Wherefore, as before, he prays judgment, if the ſaid *J.* ought to have his ſaid action maintained againſt him.

Surrejoinder, habetur tale record'.

And the ſaid *J.* ſaith, that there is ſuch a record of the ſaid precept in the ſaid replication firſt above-mentioned, and proceedings thereof, now remaining in the court of our now lord the king before the king himſelf, as the ſaid *J.* in his replication hath above alledged; and this he is ready to verify by the ſaid record; and he prays that the ſaid record may be by the ſaid court here viewed and inſpected: *But* becauſe the court of our ſaid lord the king now here is not yet adviſed

Continuance by cur' adviſare vult.

viſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lord the king at *Weſtminſter* until *Monday* next after the morrow of the aſcenſion of our Lord, to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof.

And the ſaid *J. M.* by *W. M.* her attorney, comes and defends the wrong and injury, when, *&c.* and ſays, that ſhe did not undertake and promiſe in manner and form as the ſaid *T. P.* above declares againſt her; and of this ſhe puts herſelf upon the country, *&c.* And the ſaid *J.* by leave of the court here for this purpoſe firſt had and obtained according to the form of the ſtatute in ſuch caſe made and provided, further ſays, that the ſaid *T.* ought not to have his ſaid action againſt her, becauſe ſhe ſays that ſhe did not promiſe or undertake, in manner and form as the ſaid *T.* hath above complained againſt her, at any time within ſix years next before the day of exhibiting the aforeſaid bill of him the ſaid *T.* And this ſhe is ready to verify: Wherefore ſhe prays judgment, if the ſaid *T.* ought to have or maintain his aforeſaid action againſt her, *&c.* *And* for further plea in this behalf the ſaid *J.* by like leave of the court here for this purpoſe firſt had and obtained according to the form of the ſtatute in ſuch caſe lately made and provided, ſays, that the ſaid *T.* ought not to have or maintain his aforeſaid

Plea: Non aſſumpſit; Non aſſumpſit infra ſex annos; and a ſet off, viz. That plaintiff's teſtator and plaintiff as executor, are indebted to defendant in more money, &c.

action againſt her, becauſe ſhe ſays, that the ſaid *J. P.* in his life-time and at the time of his deceaſe was indebted to the ſaid *J.* and the ſaid *T.* as executor of the laſt will and teſtament of the ſaid *J.* as aforeſaid, at the time of exhibiting the bill aforeſaid, was and ſtill is indebted to the ſaid *J.* in more money than is due or owing from her the ſaid *J.* to the ſaid *T. P.* as executor as aforeſaid, upon or by reaſon of the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned; that is to ſay, in the ſum of four hundred pounds of lawful money of *Great Britain*, for ſo much money before that time lent and advanced by the ſaid *J.* to the ſaid *J.* in his life-time at his requeſt, and alſo in the further ſum of three hundred pounds of like lawful money for ſo much money before that time paid, laid out and expended by the ſaid *J.* for the ſaid *J.* in his life-time at his requeſt; and alſo in the further ſum of four hundred pounds of like lawful money for ſo much money before that time had and received by the ſaid *J.* in his life-time for the uſe of the ſaid *J.* and alſo in the further ſum of two hundred pounds for work and labour performed and done by the ſaid *J.* and her ſervants for the ſaid *J. P.* in his life-time at his ſpecial inſtance and requeſt; that is to ſay, at *Horſham* aforeſaid; which ſaid ſeveral ſums of money are ſtill due and unpaid to the ſaid *J.* and exceed the money due and owing from the ſaid *J.* to the ſaid *T. P.* as executor as aforeſaid, upon or by reaſon of the ſaid ſeveral promiſes

promiſes and undertakings in the ſaid declaration mentioned, to wit, at *Horſham* aforeſaid. And the ſaid *J.* is ready and now offers to ſet off ſo much of the ſaid ſeveral ſums ſo due and owing to the ſaid *J.* as aforeſaid, as is ſufficient to ſatisfy the money or damages juſtly due or payable to the ſaid *T.* as executor as aforeſaid, by reaſon of the ſaid ſeveral promiſes in the ſaid declaration mentioned. And this the ſaid *J.* is ready to verify: And therefore prays judgment if the ſaid *T.* ought to have or maintain his ſaid action againſt her, *&c.*

J. Yates.

And the ſaid *T.* as to the ſaid plea of the ſaid *J.* by her ſecondly above pleaded in bar, ſays, that notwithſtanding any thing by the ſaid *J.* in that plea above alledged he ought not to be barred from having his ſaid action againſt her, becauſe he ſays that the ſaid *J.* did promiſe and undertake in manner and form as the ſaid *T.* hath above complained againſt her within ſix years next before the day of exhibiting the ſaid bill of the ſaid *T.* to wit, at *Horſham* aforeſaid; and this he prays may be inquired of by the country; and the ſaid *J.* doth the like. And the ſaid *T.* as to the ſaid plea of the ſaid *J.* by her laſtly above pleaded in bar, ſays, that notwithſtanding any thing by the ſaid *J.* in that plea above alledged, he ought not to be barred from having or maintaining his ſaid action againſt her, becauſe, proteſting that the Replication.

the ſaid *J. P.* in his life-time and at the time of his deceaſe was not indebted to the ſaid *J.* in manner and form as the ſaid *J.* hath in and by her ſaid plea above alledged; *Nevertheleſs* for replication the ſaid *T.* ſays, that he the ſaid *T.* as being executor of the laſt will and teſtament of the ſaid *J.* was not nor is indebted to the ſaid *J.* in more money than is due and owing from her the ſaid *J.* to the ſaid *T.* as executor as aforeſaid, upon the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned, as the ſaid *J.* hath in and by her ſaid plea in that behalf above alledged. And this alſo he prays may be inquired of by the country; and the ſaid *J.* doth the like, *&c.*

Clench againſt *Mullens. Mich.* 17 *Geo.* 3.

Plea (to an action againſt the marſhal for the eſcape of one in execution) That the priſoner broke the priſon, and thereout and out of the cuſtody of defendant againſt his will and without his knowledge eſcaped to

AND the ſaid *R.* in his proper perſon comes and defends the wrong and injury, when, *&c.* and ſays, that the ſaid *Edward Clench* ought not to have or maintain his ſaid action againſt him the ſaid *Richard*, becauſe he ſaith that, after the ſaid commitment of the ſaid *Richard Garner* to the cuſtody of the ſaid *Richard* in execution for the damages aforeſaid, at the ſuit of the ſaid *Edward Clench* in form aforeſaid made, to wit, on the 29th day of *Auguſt* in the ſixteenth year of the reign of our ſaid lord the king, the ſaid *Elizabeth* being then in a certain priſon called the *King's Bench* priſon, ſituate in

in the parish of *St. George the Martyr* in the county of *Surry*, in execution for the damages aforesaid, under the custody of the said *Richard* as aforesaid, she, the said *E.* upon the same day and year at the parish aforesaid in the county aforesaid, by force and arms broke the said prison, and out of the said prison and out of the custody of the said *Richard*, against the will of the said *Richard*, and without the knowledge of the said *Richard*, fled and escaped to places to the said *Richard* unknown. And the said *Richard* further saith, that before the day of exhibiting the said bill, and before the said *R.* had any notice of the said escape, that is to say, on the said 29th day of *August* in the said sixteenth year of the reign of our said lord the king, at the parish aforesaid in the said county, the said *E. G.* into the prison aforesaid, without the knowledge of the said *R. M.* returned, and continually after such return hitherto the said *E. G.* in the said prison under the custody of the said *R. M.* in execution for the damages aforesaid, at the suit of the said *E. C.* hath been detained, and is yet detained by the said *R. M.* which said escape of the said *E. G.* out of the said prison and out of the custody of the said *R. M.* so as aforesaid made, is the same escape for which the said *E. C.* hath above declared against him the said *R. M.* and this the said *R. M.* is ready to verify: Wherefore he prays judgment if the said *E. C.* ought to have or maintain

places unknown, and before exhibiting bill without defendant's knowledge returned, &c.

The commitment is custod. mar. in the Fleet to the prison of the Fleet, but the King's Bench is no local prison farther than is settled by the court.

This plea hath never been yet allowed in B R. though it hath in C. B.

maintain his ſaid action therefore againſt him the ſaid *R. M. &c.*

R. Draper.

N. B. There muſt be an affidavit of the truth of this plea. *J. Strange. Stat.* 8 & 9 *W.* 3. *c.* 27. *ſ.* 6.

The above plea was pleaded in 17 *Geo.* 3. together with *nil debet*, with an affidavit of the verification of the ſaid plea, but plaintiff diſcontinued the action, and paid coſts. It was obſerved no place or *venue* was laid in the bill that the party eſcaped to, or any *venue* in the whole narrative.

N. B. This plea was pleaded v. *Mullens.* Cauſe tried *Trin.* 18 *Geo.* 3. and verdict *pro Q.* in *B. R.*

Chambers againſt *Gambier.*

Plea (to an action againſt the warden of the Fleet, for the eſcape of one in execution) That the priſoner broke the priſon, and there out of the cuſtody of the defendant eſcap-

AND the ſaid *James Gambier* in his proper perſon comes and defends the force and injury, when, *&c.* and ſays, that the ſaid *William Chambers* ought not thereon to have or maintain his ſaid action againſt him the ſaid *J. G.* becauſe he ſays, that after the ſaid commitment of the ſaid *E. Lampton* to the ſaid priſon of the *Fleet*, under the cuſtody of the ſaid *J.* in execution for the damages aforeſaid, at the ſuit of the ſaid *W. C.* in form aforeſaid made, to wit, on the 8th day of *February*

February in the year of our Lord 1735, he the ſaid *E. L.* being then in the priſon of the *Fleet* aforeſaid, in execution for the damages aforeſaid, under the cuſtody of the ſaid *J. G.* as aforeſaid, he the ſaid *E. L.* at *London* aforeſaid, within the pariſh of *St. Bridget*, otherwiſe *Brides*, in the ward of *Farrington Without*, then and there broke the ſaid priſon by force and arms, and out of the ſaid priſon and out of the cuſtody of the ſaid *J. G.* againſt the will of the ſaid *J. G.* and without the knowledge of the ſaid *J. G.* into the ſaid pariſh of *St. Mary le Bow*, in the ward of *Cheap*, *London*, aforeſaid, and to places to the ſaid *J. G.* unknown fled: *And the ſaid* J. G. *further ſays*, that before the day of exhibiting the ſaid bill, and before the ſaid *J. G.* had any notice of the ſaid eſcape, that is to ſay, the ſaid 8th day of *February* aforeſaid in the ſaid year of our Lord 1735, at *London* aforeſaid, in the ſaid pariſh of *St. Bridget*, otherwiſe *Brides*, in the ſaid ward of *Farringdon Without* aforeſaid, the ſaid *E. L.* into the priſon aforeſaid, without the knowledge of the ſaid *J. G.* returned, and continually after ſuch return hitherto the ſaid *E. L.* in the ſaid priſon under the cuſtody of the ſaid *J. G.* in execution for the damages aforeſaid, at the ſuit of the ſaid *W. C.* hath been detained, and is yet detained by the ſaid *J. G.* which ſaid eſcape of the ſaid *E. L.* out of the ſaid priſon and out of the cuſtody of the ſaid *J. G.* ſo as aboveſaid made, is the ſame eſcape for which the ſaid *W. C.*

ed, and before exhibiting bill without defendant's knowledge returned, &c.

The day of eſcape laid in declaration.

Said to amount to a recaption on freſh purſuit. Hil. 8 G. 2. Gray v. Gambier.

Same plea allowed.

W. C hath above declared againſt him the ſaid *J. G.* and this the ſaid *J. G.* is ready to verify: Wherefore he prays judgment if the ſaid *W. C.* ought to have or maintain his ſaid action therefore againſt him the ſaid *J. G.* *&c.*

W. Hawkins.

Ball againſt *Briggs.*

DEBT upon eſcape, plea freſh purſuit and recaption ſame day bill filed, adjudged no plea, the action being attached in *Quer.* 1 *Jon.* 145. *Ca. W.* 3. *B. R.* 31.

Mullens againſt *Wall.*

Demurrer to a declaration againſt the marſhal for an eſcape.

AND the ſaid *Richard* in his own proper perſon cometh and defendeth the force and injury, when, *&c.* and ſaith, that the ſaid declaration in manner and form aforeſaid above made, and the matter therein contained, are not ſufficient in law for the ſaid *Edward* to have and maintain his ſaid action againſt the ſaid *Richard*, to which ſaid declaration the ſaid *Richard* hath no need, nor is he obliged by the law of the land to anſwer; and this he is ready to verify: Wherefore for want of a ſufficient declaration in this behalf, the ſaid *Richard* prays judgment if the ſaid *Edward* ought to have or maintain his ſaid action againſt him; and for cauſes of

demurrer in law, in this behalf, the ſaid *Richard*, according to the form of the ſtatute in ſuch caſes lately made and provided, ſhews to the court here theſe cauſes following, that is to ſay, For this * that it is not alledged in the ſaid declaration that there is *any record of commitment* of the ſaid *William Addiſon* to the cuſtody of the ſaid *Richard* as marſhal of the *Marſhalſea* of the ſaid lord the king, before the king himſelf; nor is it alledged in the ſaid declaration that any ſuch commitment of the ſaid *W. A.* appears or remains of record in the ſaid court of the ſaid lord the king before the king himſelf; and alſo for that the ſaid declaration is incertain and wants form, *&c.* Cauſe of demurrer.

R. Draper.

And the ſaid *Edward* prayeth leave to imparle unto the ſaid plea until † *Saturday* next after three weeks from the day of *St. Michael*, and then to anſwer the ſame, *&c.* and it is granted, *&c.* And thereupon the ſame day is given to the parties aforeſaid, to come before our lord the king at *Weſtminſter*; at which day, as well the ſaid *Edward* doth come by his ſaid attorney, as the ſaid *Richard* in his proper perſon. And the ſaid *Edward* ſaith that, notwithſtanding any thing by the ſaid *Richard* above alledged, he ought not to Imparlance. Joinder in demurrer.

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* Vide *infra* p. —, —.

† No ſuch return. See *Vol.* 1. *p.* —.

be

be barred from having his ſaid action maintained againſt the ſaid *Richard*, becauſe he ſaith, that the ſaid declaration, and the matter therein contained, are good and ſufficient in law for him the ſaid *Edward* to maintain his ſaid action againſt the ſaid *Richard*; which ſaid matter contained in the ſaid declaration the ſaid *E.* is ready to verify and prove in ſuch manner as the court ſhall think fit, and becauſe the ſaid *R.* hath made no anſwer to the ſaid declaration, nor in any wiſe denied the ſame, the ſaid *E.* prays judgment, and that his damages occaſioned by the premiſſes may be adjudged to him, but becauſe the ſaid court of, *&c.* [Continuance by *cur. adviſar. vult.*]

N. B. Amended on payment of coſts.

John Stracey.

Mullens againſt *Wright.*

Cauſes of demurrer to a like declaration.

AS above to, that is not alledged in the ſaid declaration, that there is any record of the commitment of the ſaid *Robert Wright* on the laſt mentioned writ of *Habeas Corpus cum cauſa*, and the return thereof to the cuſtody of the ſaid *Richard* as marſhal of the *Marſhalſea* of the ſaid lord the king before the king himſelf: Nor is it alledged in the ſaid declaration, that the ſaid laſt mentioned writ of *Habeas Corpus* and the return thereof, and the commitment of the ſaid *R. W.* thereupon, appear, or remain of record in the ſaid court of the ſaid lord the king, before the

the king himſelf; and that it doth not appear by the ſaid declaration, that there is any attorney named upon record for the ſaid *G. W.* and alſo for that, *&c. (ut ſupra.)*.

Tho. Vaughan, jun.

Trin. 17 Geo. 3.

AND the ſaid *James Cobb* by *R. R.* his attorney, comes and defends the wrong and injury, when, *&c.* and ſays, the ſaid *Catharine Treadway* ought not to have her ſaid action againſt him, becauſe he ſays, that he has no goods or chattels which were of the ſaid *George Treadway* at the time of his death, in his hands to be adminiſtered; nor had on the day of exhibiting the aforeſaid bill, nor at any time before or afterwards, except goods and chattels to the value of 25 *l.* and this the ſaid *James* is ready to verify: Wherefore he prays judgment if the ſaid *Catherine* ought to have or maintain her action aforeſaid againſt him, except for the ſaid 25 *l. &c.*

Plea by an adminiſtrator, No aſſets, except 25 l. pleaded to an action of debt on a judgment.

Arthur Murphy.

And the ſaid *Sarah Baſcomb*, by *Thomas Owens* her attorney, comes and defends the wrong and injury, when, *&c.* and ſaith, that the ſaid *William Pollard* ought not to have or maintain his ſaid action againſt her, becauſe ſhe ſaith, that the ſaid *Matthias Baſcom* in his life-time, to wit, on the 6th day of *January*

Plea by an executor that the teſtator was indebted by bond, upon which the obligee recovered judgment againſt the de-

fendant the executor, et plene administravit præter, &c.

nuary in the year of our Lord 1729, at *Weſtminſter* aforeſaid, by a certain writing obligatory ſealed with his ſeal, and then and there delivered as his deed for a true and juſt debt, acknowledged himſelf to be held and firmly bound to one *William Bowles*, eſq; in 276 *l.* of lawful money of *Great Britain*, to be paid to the ſaid *W. B.* when he ſhould be thereunto afterwards required; which ſaid writing obligatory at the time of the death of the ſaid *M.* was in its full force and virtue, not ſatisfied, diſcharged or cancelled. *Whereupon* the ſaid *W. B.* for recovering his ſaid debt, after the death of the ſaid *M.* to wit, in this preſent term of *St. Mich.* in the 14th year of the reign of our ſaid lord the king, in the court of our ſaid lord the king, before Sir *J. W.* knt. and his companions then juſtices of our ſaid lord the king of the bench at *Weſtminſter* aforeſaid, impleaded the ſaid *Sarah* upon the writing obligatory aforeſaid, as executrix of the laſt will and teſtament of the ſaid *M.* of a plea of debt for the ſaid 276 *l.* in which ſaid plea ſuch proceedings were had in the ſaid court of our ſaid lord the king of the bench, that afterwards, to wit, in this ſame *Michaelmas* term, the ſaid *W B.* in the ſame court, by the conſideration of the ſame court, recovered againſt the ſaid *Sarah* as well the ſaid debt of 276 *l.* as 50 *s.* which were adjudged to the ſaid *W.* in the ſame court for his damages, which he had ſuſtained by reaſon of the detaining the ſaid debt, to be levied of the goods and chattels which

which were of the ſaid *M.* at the time of his death, in the hands of the ſaid *Sarah* to be adminiſtered, if ſhe had ſo much thereof in her hands to be adminiſtered, and if ſhe had not ſo much thereof in her hands to be adminiſtered, then the damages aforeſaid to be levied of the proper goods and chattels of the ſaid *Sarah*, whereof ſhe is convicted, as by the record of the ſaid judgment now remaining in the court of our ſaid lord the king of the bench at *Weſtminſter* aforeſaid, more fully appears; which ſaid judgment ſo as aforeſaid had and obtained upon the ſaid writing obligatory, was ſo had and obtained for a true and juſt debt, due and owing to the ſaid *W. A.* by the ſaid *M.* at the time of his death, upon the writing obligatory aforeſaid. *And* the ſaid judgment yet remains in its full force and effect, not reverſed, annulled, diſcharged or ſatisfied. *And* the ſaid *S.* further ſaith, that ſhe hath fully adminiſtered all and ſingular the goods and chattels, which were of the ſaid *M.* at the time of his death, in her hands to be adminiſtered, except goods and chattels to the value of 5 *l.* And that ſhe hath not, nor on the day of exhibiting the ſaid bill of the ſaid *W. P.* or ever after had, any goods or chattels which were of the ſaid *M.* at the time of his death, in her hands to be adminiſtered, except goods and chattels to the value of the ſaid 5 *l.* which are liable towards the ſatisfaction of the money due upon the ſaid judgment here above-mentioned; and this the ſaid *S.* is ready to verify: Wherefore he prays judgment if the ſaid *W.*

P. ought to have or maintain his ſaid action againſt her, *&c.*

Tho. Deniſon.

Plea in treſpaſs.

Quoad vi & armis, &c.

Not guilty.

Iſſue.

As to the reſidue, that one C. C. was ſeiſed of a meſſuage and meadow, and he, and all whoſe, &c. had a way from the meſſuage to the meadow through the locus in quo, &c.

And the ſaid *John Jones*, by *A. B.* his attorney, comes and defends the force and injury, when, *&c. And* as to the coming with force and arms, and whatever is againſt the peace of the ſaid lord the king, ſays, that he is not thereof guilty: And thereupon he puts himſelf upon the country. *And* the ſaid *W.* does ſo likewiſe. *And* as to the reſidue of the ſaid treſpaſs, above ſuppoſed to be done, the ſaid *John* ſays, that the ſaid *William* ought not therefore to have or maintain his ſaid action againſt him, becauſe he ſays, that *Charles Colborne*, eſquire, long before the ſaid firſt time when, *&c.* was ſeiſed in his demeſne as of fee, of and in a certain meſſuage and a certain meadow called ——, with the appurtenances, ſituate, lying and being in the pariſh aforeſaid; and the ſaid *Charles*, and all thoſe whoſe eſtate he had and has in the ſaid meſſuage and meadow called ———, with the appurtenances, from time whereof the memory of man is not to the contrary, have had and uſed, and have been uſed and accuſtomed, and of right ought to have and uſe, a certain way as well on foot as on horſeback, as for their carts and carriages, and for the driving of their cattle from the ſaid meſſuage, with the appurtenances, into, through and over the ſaid cloſe called *Dogbillock-field*, in which, *&c.* into the ſaid meadow called

——,

——, and back again from the ſaid meadow called ——, into, through and over the ſaid cloſe called *Doghillock-field*, in which, *&c.* in the ſaid way there to the ſaid meſſuage, with the appurtenances, every year at all times of the year, when and as often as occaſion required, for the uſe and enjoyment of the ſaid meadow called ——, and the perception of the profits thereof. *And* the ſaid *C.* being ſo ſeiſed of the ſaid meſſuage and meadow called ——, with the appurtenances as aforeſaid, he the ſaid *C.* long before the ſaid firſt time, when, *&c.* to wit, on the 26th day of *March* in the year of our Lord 1738, at the pariſh aforeſaid, demiſed the ſaid meſſuage and meadow called ——, with the appurtenances, to the ſaid *J. Jones*, to have and to hold to the ſaid *J. Jones* from the feaſt of the Annunciation of the Bleſſed Virgin *Mary* then laſt paſt, for and during one whole year, and from the end of that year from year to year, at the will of the ſaid *C.* and *J. Jones*. By virtue of which ſaid demiſe, he the ſaid *J. Jones* entered into the ſaid demiſed meſſuage and meadow called ——, with the appurtenances, and from thenceforth hitherto has been and ſtill is poſſeſſed thereof; and being ſo poſſeſſed thereof, he the ſaid *J. J.* on the ſaid 10th day of *December* in the ſaid 13th year of the reign of our ſaid lord the king, and at divers other days and times between that day and the ſaid 15th day of *January* in the ſaid 14th year of the reign of our ſaid lord the king, went on foot with

C. leaſed to defendant.

Defendant entered.

Defendant uſed the ſaid way.

his ſaid cattle in the ſaid declaration mentioned, and with his ſaid carts and carriages therein alſo mentioned, drawn by the ſaid horſes, mares, geldings and oxen, from his ſaid meſſuage, with the appurtenances, into, through and over the ſaid cloſe called *Dog-hillock-field*, in which, *&c.* in the ſaid way there into his ſaid meadow called ———, and back again from his ſaid meadow called ———, into, through and over the ſaid cloſe, in which, *&c.* in the ſaid way there to his ſaid meſſuage, with the appurtenances, for the uſe and enjoyment of the ſaid meadow called ———, and for the perception of the profits thereof, as it was lawful for him to do; and in ſo doing, he the ſaid *John Jones*, neceſſarily trod down, and conſumed with his feet in walking, a little of the ſaid graſs and corn then growing in the ſaid way in the ſaid cloſe, in which, *&c.* and broke up, ſubverted, ſpoiled and conſumed, with the wheels of the ſaid carts and carriages, the ſoil of the cloſe, in which, *&c.* in the ſaid way there, and the ſaid other graſs and corn growing in the ſaid way there; and the ſaid cattle in their paſſage through the ſaid cloſe, in which, *&c.* on the occaſion aforeſaid, did neceſſarily tread down with their feet a little of the ſaid graſs and corn then growing in the ſaid way, in the ſaid cloſe, in which, *&c.* and againſt the will of the ſaid *J. Jones* ſnatched, and eat up and conſumed a little more of the ſaid graſs and corn growing in the ſaid way there, and

and on the ſides thereof; and the ſaid *J. Jones*, in the ſaid uſe and enjoyment of his ſaid way in and through the ſaid cloſe, in which, &c. did as little damage to the ſaid *William* as he could; which ſaid breaking and entering of the ſaid cloſe, in which, &c. and the treading down and conſuming with his feet in walking the ſaid graſs and corn there growing, and the eating up, treading down and conſuming with the ſaid cattle the ſaid other graſs and corn there growing, and the breaking up, ſubverting, ſpoiling and conſuming with the ſaid wheels of carts and carriages the ſaid ſoil of the ſaid cloſe, in which, &c. and the ſaid other graſs and corn there likewiſe growing in manner aforeſaid, and for the cauſe aforeſaid done, are the reſidue of the ſaid treſpaſs, of which the ſaid *William* hath above complained againſt him; and this he is ready to verify: Wherefore he prays judgment, if the ſaid *William* ought therefore to have or maintain his ſaid action againſt him, &c.

Doing as little damage as he could.

S. Bonnet.

Caſe.

Of the term of St. Michael *in the fifteenth year of the reign of king* George *the third.*

Indorſee of a promiſſory note againſt the drawer.

Middleſex, *to wit.* R. R. complains of *O. B.* gent. being in the cuſtody of the marſhal of the *Marſhalſea* of the lord the king, before the king himſelf, for that whereas the ſaid *O.* after the firſt day of *May* in the year of our Lord one thouſand ſeven hundred and five, to wit, on the

25 Sept. 1770. Note made.

twenty-fifth day of *September* in the year of our Lord one thouſand ſeven hundred and twenty-ſeven, at *Weſtminſter* in the ſaid county, made a certain note in writing ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year laſt mentioned, by which note

Payable in four months.

the ſaid *O.* promiſed to pay to Mrs. *H. S.* or her order, *four months after* the date of the ſaid note, the ſum of ten pounds *for value received* by the ſaid *O.* and the ſaid ſum of money being unpaid, the ſaid *H. S.* afterwards, to wit, on the twenty-eighth day of *September* in the year laſt aforeſaid, at *Weſtminſter* aforeſaid in the ſaid county, indorſed the ſaid note, her own hand being thereunto ſubſcribed, and by the ſaid indorſement appointed the contents of the ſaid note to be

Indorſed.

paid

paid to *S. A.* or his order, for value received; and the ſaid ſum of money being unpaid, the ſaid *S.* afterwards, to wit, on the thirtieth day of *September* in the year laſt aforeſaid, at *Weſtminſter* aforeſaid in the ſaid county, indorſed the ſaid note, his own hand being thereunto ſubſcribed, and by the ſaid indorſement appointed the contents of the ſaid note to be paid to the ſaid *R.* or his order, for value received by the ſaid *S.* * of which premiſſes the ſaid *O.* afterwards, and after the end of the ſaid four months, to wit, on the firſt day of *May* in the year of our Lord one thouſand ſeven hundred and thirty-two, at *Weſtminſter* aforeſaid in the ſaid county, had notice; and by reaſon of the premiſſes, and by force of the ſtatute in that caſe lately made and provided, the ſaid *O.* became liable to pay to the ſaid *R.* the ſaid ſum of money

Indorſed again.

1 May 1772. Notice to defendant.

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* Caſe *ſur aſſumpſit* on a promiſſory note, whereby the defendant promiſed to pay to *W. W.* or order 50 *l.* for value received, which note was indorſed by *W.* to the plaintiff. Demurrer, for that it is not alledged that the defendant had notice of the indorſement. *Lawrence* v. *Jacob*, 8 *Mod. Rep.* 43. cited. *Curia:* The caſe is miſreported, the judgment was affirmed. On the authority of that caſe, and on the reaſoning of the thing; for the defendant by his demurrer admits that in conſideration of the premiſſes, *viz.* defendant's making the indorſable note, and the indorſing it to the plaintiff, the defendant aſſumed to pay the money according to the tenor of the note; judgment was given for the plaintiff. *Paſ.* 10 *Geo.* 2. *C. B. Skip.* v. *Hook, intr. Hil.* 10 *Geo.* 2. *ro.* 369. *Com. Rep.* 563. Vide 1 Vol.

contained

contained in the ſaid note; and being ſo liable, he the ſaid *O.* afterwards, to wit, on the day and year laſt above-mentioned, at *Weſtminſter* aforeſaid in the ſaid county, aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *R.* that he the ſaid *O.* would pay to the ſaid *R.* the ſaid ſum of money when he ſhould be requeſted to pay the ſame: And whereas the ſaid *O.* afterwards, to wit, on the ſaid twenty fifth day of *September* in the year of our Lord one thouſand ſeven hundred and twenty-ſeven aforeſaid, at *Weſtminſter* in the ſaid county, made a certain other note in writing, ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year laſt aboveſaid, by which note the ſaid *O.* promiſed to pay to the ſaid Mrs. *H. S.* or her order, *four months after* the date of the ſaid note, the ſum of ten pounds *for value received by* the ſaid *O.* and the ſaid ſum of money laſt mentioned being unpaid, the ſaid *H. S.* afterwards, to wit, on the twenty-eighth day of *September* in the year laſt aforeſaid, at *Weſtminſter* aforeſaid in the ſaid county, indorſed the ſaid note, her own hand being thereunto ſubſcribed, and by the ſaid indorſement appointed the contents of the ſaid laſt mentioned note to be paid to *S. A.* or his order, for value received; and the ſaid ſum of money being unpaid, the ſaid *S.* afterwards, to wit, on the thirtieth day of *September* in the year laſt aforeſaid, at *Weſtminſter* aforeſaid in the ſaid county, indorſed the ſaid

And aſſumpſit.

25 Sept. 1770. Another note.

Indorſed.

Indorſed again.

ſaid note, his own hand being thereunto ſubſcribed, and by the ſaid indorſement appointed the contents of the ſaid note to be paid to the ſaid *R.* or his order, for value received by the ſaid *S.* of which premiſſes the ſaid *O.* afterwards, to wit, on the ſame day and year laſt aforeſaid, at *Weſtminſter* aforeſaid, had notice; and by reaſon of the premiſſes, and by force of the ſtatute in that caſe lately made and provided, the ſaid *O.* became liable to pay to the ſaid *R.* the ſaid ſum of money contained in the ſaid laſt mentioned note, according to the form and effect of the ſaid note; and the ſaid ſum of money laſt mentioned being unpaid, the ſaid *O.* in conſideration of the premiſſes, afterwards, to wit, on the tenth day of *May* in the year of our Lord one thouſand ſeven hundred and thirty-three, at *Weſtminſter* aforeſaid in the ſaid county, paid to the ſaid *R.* part, to wit, the ſum of five pounds of the ſaid ten pounds laſt mentioned, and aſſumed upon himſelf, and then and there faithfully promiſed the ſaid *R.* that he the ſaid *O.* would pay to the ſaid *R.* the reſidue of the ſaid ſum of money contained in the ſaid laſt mentioned note, when he ſhould be thereunto afterwards requeſted: Nevertheleſs the ſaid *O.* not regarding his ſaid ſeveral promiſes and undertakings ſo made as aforeſaid, but contriving and fraudulently intending to deceive and defraud the ſaid *R.* in this behalf, hath not paid to him the ſaid *R.* the firſt above-mentioned ſum of money, or any part thereof, or the reſidue of

10 May 1773. Defendant pays part, and aſſumpſit for the reſt.

Breach.

of the ſaid laſt above-mentioned ſum of money, or any further part thereof, (although the ſaid *O.* afterwards, to wit, on the firſt day of *October* in the year of our Lord one thouſand ſeven hundred and thirty-five, at *Weſtminſter* aforeſaid, was requeſted by the ſaid *R.* to pay him the ſame) but has hitherto wholly refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *R.* to the damage of the ſaid *R.* of twenty pounds; and thereupon he brings ſuit, *&c.*

Pledges of proſecuting { *John Doe* and *Richard Roe.*

Trin. 16 *Geo.* 3.

Indeb. aff. for the freight of goods and merchandizes.

London, *to wit.* *M.* *R.* complains of *J. N.* in the cuſtody of the marſhal, *&c.* for that, to wit, that whereas the ſaid *J.* on the firſt day of *March* in the year of our Lord one thouſand ſeven hundred and ſeventy-four, at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was indebted to the ſaid *M.* in fifty pounds of lawful money of *Great Britain*, for the freight of divers goods and merchandizes, before that time carried by the ſaid *M.* in his veſſel for the ſaid *J.* at the ſpecial inſtance and requeſt of the ſaid *J.* and for other labour, work and ſervice before that time done and performed by the ſaid *M.* for the ſaid *J.* at the like ſpecial

cial inſtance and requeſt of the ſaid *J.* and being ſo indebted, he the ſaid *J.* in conſideration thereof, afterwards, to wit, on the ſame day and year, at *London* aforeſaid in the pariſh and ward aforeſaid, did aſſume upon himſelf, and then and there faithfully promiſe the ſaid *M.* that he the ſaid *J.* would pay to the ſaid *M.* the ſaid ſum of money when the ſaid *J.* ſhould be requeſted to pay the ſame: And whereas the ſaid *J.* afterwards, to wit, on the ſame day and year, at *London* aforeſaid in the pariſh and ward aforeſaid, in conſideration that the ſaid *M.* at the like ſpecial inſtance and requeſt of the ſaid *J.* had before that time carried divers other goods, wares and merchandizes on board another veſſel of the ſaid *M.* for the ſaid *J.* and alſo had before that time, at the like ſpecial inſtance and requeſt of the ſaid *J.* done and performed other labour, work and ſervice for the ſaid *J.* did aſſume upon himſelf, and then and there faithfully promiſe the ſaid *M.* that he the ſaid *J.* would pay to the ſaid *M.* ſo much money as he therefore reaſonably deſerved to have when the ſaid *J.* ſhould be requeſted to pay the ſame; and the ſaid *M.* in fact ſays, that he did therefore reaſonably deſerve to have of the ſaid *J.* other fifty pounds of like lawful money of *Great Britain*, to wit, at *London* aforeſaid in the pariſh and ward aforeſaid, of which the ſaid *J.* had then and there notice: *Neverthe-* Breach.
leſs the ſaid *J.* not regarding his ſaid ſeveral promiſes and undertakings, ſo made as aforeſaid

Quantum meruit for the freight of goods and merchandizes.

ſaid, but contriving and fraudulently intending to deceive and defraud the ſaid *M.* in this behalf, hath not paid to him the ſaid ſeveral ſums of money, or any of them, or any part thereof, although to pay the ſame to him the ſaid *M.* he the ſaid *J.* afterwards, that is to ſay, the ſame day and year aforeſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, was requeſted by the ſaid *M.* but the ſaid *J.* to pay the ſame to him hath hitherto altogether refuſed, and doth yet refuſe, to the damage of the ſaid *M.* of ſixty pounds; and therefore he brings ſuit, *&c.* pledges, *&c.*

Eaſter *term in the ſixteenth year of the reign of king* George *the third.*

Lee.

By an attorney indeb. aſſ. for buſineſs done, money laid out, and for fees.

Middleſex, *to wit.* *J. D.* gent. one of the attornies of the court of the lord the king, before the king himſelf being, according to the liberty and privilege of ſuch attornies of the ſame court, from the time whereof the memory of man is not to the contrary, uſed and approved of in the ſame, preſent here in court in his proper perſon, complains of *S. A.* and *H. C.* in the cuſtody of the marſhal of the *Marſhalſea* of the lord the king, before the king himſelf being, *For that whereas* the ſaid *S.* and *H.* on the firſt day of *January* in the year of our Lord one thouſand ſeven hundred and ſeventy-four, at *Weſtminſter* in the county

county of *Middleſex*, were indebted to the ſaid *J.* in fifty pounds of lawful money of *Great Britain*, for work and labour as an attorney and ſolicitor, before then done and performed by the ſaid *J.* upon the retainer and at the ſpecial inſtance and requeſt of the ſaid *S.* and *H.* in and about the proſecuting, defending and ſoliciting of divers cauſes, ſuits and buſineſſes, and for money laid out, expended and paid by the ſaid *J.* at the like inſtance and requeſt of the ſaid *S.* and *H.* in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits and buſineſſes, and for the money due to the ſaid *J.* for his fees due and of right payable to him in that reſpect; and being ſo indebted, they the ſaid *S.* and *H.* in conſideration thereof, afterwards, to wit, on the ſame day and year at *Weſtminſter* aforeſaid, aſſumed upon themſelves, and then and there faithfully promiſed the ſaid *J.* that they the ſaid *S.* and *H.* would pay to the ſaid *J.* the ſaid ſum of money when requeſted to pay the ſame: *And whereas* the ſaid *S.* and *H.* afterwards, to wit, on the ſame day and year, at *Weſtminſter* aforeſaid, in conſideration that the ſaid *J.* upon their retainer, and at their like inſtance and requeſt, had done and performed other work and labour as an attorney and ſolicitor in and about the proſecuting, defending and ſoliciting divers other cauſes, ſuits and buſineſſes, and laid out, expended and paid other money in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits and buſineſſes, aſſumed upon

Upon retainer.

Quantum meruit for buſineſs done as an attorney on retainer, money laid out, and for fees.

on themſelves, and then and there faithfully promiſed the ſaid *J.* that they the ſaid *S.* and *H.* would pay to the ſaid *J.* ſo much money as he reaſonably deſerved to have for his laſt mentioned work and labour, and ſo much money as he had ſo laid out, expended and paid in and about the ſaid proſecuting, defending and ſoliciting the ſaid laſt mentioned cauſes, ſuits and buſineſſes; and ſo much money as was due to the ſaid *J.* for his fees due and of right payable to him in that reſpect, when the ſaid *S.* and *H.* ſhould be thereunto requeſted: And the ſaid *J.* avers, that he reaſonably deſerved to have of the ſaid *S.* and *H.* for his laſt mentioned work and labour, other fifty pounds of like lawful money; and that he had ſo laid out, expended and paid in and about the ſaid proſecuting, defending and ſoliciting the ſaid laſt mentioned cauſes, ſuits and buſineſſes, thirty pounds of like lawful money; and that twenty pounds of like lawful money were due to the ſaid *J.* for his fees due and of right payable to him in that reſpect, to wit, at *Weſtminſter* aforeſaid, whereof the ſaid *S.* and *H.* then and there had notice: *And whereas* alſo the aforeſaid *S.* and *H.* afterwards, to wit, on the ſame day and year at *Weſtminſter* aforeſaid, were indebted to the ſaid *J.* in eighteen pounds of like lawful money for the like ſum of money by the ſame *J.* at the ſpecial inſtance and requeſt of the ſaid *S.* and *H.* before that time expended, laid out, diſburſed and paid; and being ſo indebted, the ſaid

Indeb. aſſ. for money laid out and expended.

S.

S. and *H.* afterwards, to wit, the ſame day and year at *Weſtminſter* aforeſaid, in conſideration thereof aſſumed upon themſelves, and to the ſame *J.* then and there faithfully promiſed, that they the ſaid *S.* and *H.* the ſame eighteen pounds to the ſame *J.* when they ſhould be thereto afterwards requeſted, would well and truly pay and content: *Yet* the ſaid *S.* and *H.* in no wiſe regarding their ſaid ſeveral promiſes and aſſumptions made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *J.* in this reſpect, have not, nor either of them hath paid to the ſaid *J.* the ſaid ſeveral ſums of money, or any part thereof, (although the ſaid *S.* and *H.* afterwards, to wit, on the fifth day of *January* in the ſame year at *Weſtminſter* aforeſaid, were requeſted by the ſaid *J.* to pay him the ſame) but have hitherto refuſed, and ſtill do refuſe to pay the ſame to the ſaid *J.* to the damage of the ſaid *J.* of ſixty pounds: And thereupon he brings ſuit, *&c.* Breach.

D. in perſon.
———— for the defendants.

Pledges to proſecute { *John Doe*, and *Richard Roe.*

Eaſter *term in the ſixteenth year of king* George *the third.*

Declaration on promiſſory note by joint indorſees againſt the drawer.

London, to wit. *A.* *C.* and *J. C.* complain of *C. K.* in the cuſtody of the marſhal, *&c. For that whereas* the ſaid *C.* on the twelfth day of *November* in the year of our Lord one thouſand ſeven hundred and ſeventy-four, at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, made his note in writing, commonly called a promiſſory note, ſubſcribed with his own proper hand, bearing date the ſame day and year, and then and there delivered the ſaid note to one *A. D.* and by the ſaid note the ſaid *C.* promiſed to pay to the ſaid *A.* or his order, *twelve months after* the date of the ſaid note, three hundred and forty-ſeven pounds, *for value received by* him the ſaid *C.* which ſaid *A.* afterwards, and before the time limited for the payment of the ſaid three hundred and forty-ſeven pounds by the ſaid note, to wit, on the day and year aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, by his indorſement ſubſcribed with his own proper hand upon the ſame note, appointed the contents of the ſaid note, to wit, the ſaid three hundred and forty-ſeven pounds, to be paid to the ſaid *A* and *J.* for value received; of which premiſſes the ſaid *A.* and *J.* afterwards, to wit, on the day and year aboveſaid, at *London* aforeſaid, in the pariſh and ward afore-

Indorſement.

aforeſaid, gave notice to the ſaid *C.* by reaſon whereof, and by force of the ſtatute in ſuch caſe made and provided, the ſaid *C.* became liable to pay to the ſaid *A.* and *J.* the ſaid three hundred and forty-ſeven pounds, according to the tenor of the ſaid note: And the ſaid *C.* being ſo liable afterwards, to wit, on the day and year aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *A.* and *J.* to pay them the ſaid three hundred and forty-ſeven pounds, according to the tenor of the ſaid note: *And whereas* the ſaid *C.* afterwards, to wit, on the firſt day of *January* in the year of our Lord one thouſand ſeven hundred and ſeventy-five, at *London* aforeſaid, in the pariſh and ward aforeſaid, was indebted to the ſaid *A.* and *J.* in other three hundred and forty-ſeven pounds of lawful money of *Great Britain*, for monies by him the ſaid *C.* before that time had and received to the uſe of them the ſaid *A.* and *J.* and the ſaid *C.* being ſo indebted in that behalf, afterwards, to wit, on the day and year laſt aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *A.* and *J.* to pay them the ſaid three hundred and forty-ſeven pounds laſt mentioned: *Nevertheleſs* the ſaid *C.* not regarding his ſeveral promiſes and undertakings aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *A.* and *J.*

Indeb. aſſump. for money received to the plaintiff's uſe.

Breach.

in theſe reſpects (although he hath been often requeſted) hath not paid the ſaid ſeveral ſums of money, or any part thereof, to the ſaid *A.* and *J.* but hath wholly refuſed and ſtill doth refuſe to pay the ſame to them, to the ſaid *A.* and *J.* their damage of three hundred and ſeventy pounds: And thereupon they bring ſuit, *&c.*

R. C. Attorney for the plaintiffs.
C. B. Attorney for the defendants.

Pledges of proſecuting, *to wit*, { *John Doe*, and *Richard Roe.*

Michaelmas *term in the ſixteenth year of king* George *the third.*

P. R. declaration ſur aſſumpſit againſt an executrix. Indeb. aſſ. by teſtator for money had and received.

London, *to wit.* *E H.* eſq; complaineth of *K. M.* executrix of the laſt will and teſtament of *H. M.* her late huſband, deceaſed, for this, to wit, that whereas the ſaid *H.* in his life-time, to wit, the twenty-ninth day of *March* in the year of our Lord one thouſand ſeven hundred and ſeventy-four, at *London* aforeſaid in the pariſh of *St. Michael Cornhill*, in the ward of *Cornhill*, was indebted to the ſaid *E.* in ſix hundred and fifty pounds of lawful money, for the like ſum of money by the ſaid *H.* in his life-time for the ſaid *E.* and to the uſe of the ſaid *E.* before that time had and received; and being thereupon ſo indebted he the

the ſaid *H.* in his life-time, in conſideration thereof afterwards, to wit, the ſame day and year at *London* aforeſaid in the pariſh and ward aforeſaid, took upon himſelf, and to the ſaid *E.* then and there faithfully promiſed, that he the ſaid *H.* the aforeſaid ſix hundred and fifty pounds to the ſaid *E.* when he ſhould be thereunto required, would well and truly pay and ſatisfy: *And whereas* afterwards, to wit, the ſame day and year at *London* aforeſaid in the pariſh and ward aforeſaid, he the ſaid *H.* in his life-time was indebted to the ſaid *E.* in other ſix hundred and fifty pounds of like lawful money, for ſo much money by the ſaid *E.* for the ſaid *H.* in his life-time, and at his ſpecial inſtance and requeſt before that time, paid, laid out and expended; and being thereupon ſo indebted he the ſaid *H.* in his life-time, in conſideration thereof, afterwards, to wit, the ſame day and year at *London* aforeſaid in the pariſh and ward aforeſaid, took upon himſelf, and to the ſaid *E.* then and there faithfully promiſed to pay to the ſaid *E.* the ſaid ſix hundred and fifty pounds laſt mentioned, when he ſhould be thereunto afterwards required: *And whereas* alſo afterwards, to wit, the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid *H.* in his life-time and the ſaid *E.* accounted together between themſelves of and concerning divers other ſums of money by the ſaid *H.* in his life-time to the ſaid *E.* before that time owing, and then being in arrear and unpaid, and upon that account he the ſaid *H.* then

The like for money laid out.

Inſimul computaſſ. plaintiff and teſtator.

then and there was found in arrear towards the ſaid *E.* in two hundred thirty and eight pounds three ſhillings and eleven pence of like lawful money; and being thereupon ſo found in arrear he the ſaid *H.* in his life-time, in conſideration thereof, afterwards, to wit, the ſame day and year at *London* aforeſaid in the pariſh and ward aforeſaid, took upon himſelf, and to the ſaid *E.* then and there faithfully promiſed to pay to the ſaid *E.* the ſaid two hundred thirty and eight pounds three ſhillings and eleven pence, when he ſhould be afterwards thereunto required: *Neverthelefs* the ſaid *H.* in his life-time, and the ſaid *K.* ſince the death of the ſaid *H.* not regarding the promiſes and undertakings of the ſaid *H.* in his life-time made as aforeſaid, but contriving and fraudulently intending the ſaid *E.* in this behalf craftily and ſubtilly to deceive and defraud, the aforeſaid ſeveral ſums of money, or any part thereof, to the ſaid *E.* have not paid, nor hath either of them paid, nor hitherto in any wiſe ſatisfied him for the ſame, (although to do the ſame the ſaid *H.* in his life-time afterwards, to wit, the ſame day and year, and the ſaid *K.* ſince the death of the ſaid *H.* to wit, the firſt day of *October* in the ſeventeenth year of the reign of his preſent majeſty king *George* the third, at *London* aforeſaid in the pariſh and ward aforeſaid, by the ſaid *E.* was requeſted) but the ſame to the ſaid *E.* they the ſaid *H.* in his life-time, and the ſaid *K.* ſince the death of the ſaid *H.* have utterly refuſed to pay, and the ſaid *K.* doth

Breach.

doth ſtill refuſe to pay: Wherefore the ſaid *E.* ſaith that he is injured and damaged to the value of ſeven hundred pounds; and therefore brings his ſuit, and prays the aid and aſſiſtance of this honourable court.

T. H. for the plaintiff.
——— for the defendant.

Pledges to proſecute { *John Doe*, and *Richard Roe.*

Michaelmas *term in the ſixteenth year of the reign of king* George *the third.*

London, *to wit.* BE *it remembered*, that heretofore, that is to ſay, in the term of the Holy *Trinity* laſt paſt, *W. S.* came before our lord the king at *Weſtminſter* by *J. F.* his attorney, and brought into the court of our ſaid lord the king then there his bill againſt *T. M.* and *M.* his wife, executrix of the laſt will and teſtament of *T. R.* deceaſed, being in the cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lord the king, before the king himſelf, in a plea of treſpaſs on the caſe; and there are pledges for the proſecution, to wit, *John Doe*, and *Richard Roe*; which ſaid bill follows in theſe words, that is to ſay, *London*, to wit, *W. S.* complains of *T. M.* and *M.* his wife, executrix of the laſt will and teſtament of *T. R.* deceaſed, being in the cuſtody

Memorandum of a precedent term.

Declaration againſt baron and feme, executrix, on a ſpecial promiſe by teſtator.

cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lord the king, before the king himſelf, for that *whereas* by certain articles of agreement made and agreed upon the ſixteenth day of *May* in the year of our Lord one thouſand ſeven hundred and fifty-nine, at *London*, that is to ſay, at the pariſh of *St. Mary le Bow* in the ward of *Cheap*, between the ſaid *W. S.* of the one part, and one *R. S.* of *London*, mariner, of the other part, the ſaid *W. S.* for himſelf, his executors and adminiſtrators, did covenant, promiſe and agree to and with the ſaid *R. S.* in manner and form following, that is to ſay, that he the ſaid *W. S.* for and in conſideration of the ſum of forty-two pounds of lawful money of *Great Britain*, to be to him in hand paid by the ſaid *R. S.* in manner following, that is to ſay, twenty-one pounds, part thereof, on or before the executing of the ſaid articles, and the remaining ſum of twenty-one pounds, at the expiration of two years, to commence from the day of the date of the ſaid articles, ſhould and would well, truly and fully teach and inſtruct, or cauſe to be taught and inſtructed, the ſaid *R. S.* in the trade, art or myſtery of a frame-work knitter, which he then uſed, after the beſt way and manner that he could within the term or time of two years, to commence from the day of the date of the ſaid articles, and alſo find, provide and allow the ſaid *R. S.* good and wholeſome meat, drink, waſhing and lodging, during the ſaid term of two years, which he the ſaid

Recital of articles of apprenticeſhip.

ſaid *R. S.* had agreed to live or continue with the ſaid *W. S.* and the ſaid *R. S.* for the conſiderations aforeſaid, by the ſaid articles did covenant, promiſe and agree to and with the ſaid *W. S.* his executors and adminiſtrators, that he the ſaid *R. S.* would, during the ſaid term of two years, well, truly and honeſtly demean himſelf towards the ſaid *W. S.* and alſo ſhould and would, at the end or expiration of the ſaid term of two years in the ſaid articles above named, if he ſhould ſo long live, pay or cauſe to be paid unto the ſaid *W. S.* his executors or adminiſtrators, the ſaid ſum of twenty-one pounds ſo agreed to be by him paid as aforeſaid: Alſo by the ſaid articles it was mutually covenanted, concluded and agreed between the ſaid parties, that the ſaid ſum of twenty-one pounds, ſo agreed to be afterwards paid by the ſaid *R. S.* ſhould, on the day of the date of the ſaid articles, be placed out at intereſt for the benefit of the ſaid *R. S.* in the hands of the ſaid *T. R.* (if he ſhould be willing to receive it) until the ſame ſhould become due and payable to the ſaid *W. S.* his executors or adminiſtrators; and if the ſaid *R. S.* ſhould happen to die between the firſt and ſecond year of the ſaid term of two years in the ſaid articles before-mentioned, and not otherwiſe, that then and in ſuch caſe the ſaid ſum of twenty-pounds, thereby agreed to be depoſited in the hands of the ſaid *T. R.* as aforeſaid, ſhould be by him on demand paid to the ſaid *W. S.* his executors or adminiſtrators; any thing in the ſaid ar-

ticles before contained to the contrary thereof in any wiſe notwithſtanding: And whereas afterwards, to wit, on the ſaid ſixteenth day of *May* in the year aforeſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, in purſuance of the ſaid articles of ſaid ſum of twenty-one pounds therein laſt-mentioned, at the ſpecial inſtance and requeſt of the ſaid *T. R.* in his life-time, by the direction and with the conſent of the ſaid *W. S.* was placed out and depoſited in the hands of the ſaid *T. R.* by the ſaid *R. S.* in the ſaid articles named, and the ſaid *T. K.* then and there received the ſame from the ſaid *R. S.* for the purpoſe in the ſaid articles mentioned, according to the true intent and meaning of the ſame articles; in conſideration thereof he the ſaid *T. R.* afterwards in his life-time, to wit, on the twenty-firſt day of *May* in the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, took upon himſelf, and then and there faithfully promiſed the ſaid *W. S.* to pay him the ſaid *W. S.* the ſaid ſum of twenty-one pounds at the time mentioned in the ſaid articles, in caſe the ſaid *R. S.* did not depart this life before he had ſerved one year of his time mentioned in the ſaid articles: And the ſaid *W.* doth aver, that the ſaid *R. S.* in the ſaid articles named did not depart this life before he had ſerved one year of his time mentioned in the ſaid articles, but is ſtill alive, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid, of which the ſaid *T. M.* and *M.* after the death of the ſaid *T. R.*

Money being depoſited in the teſtator's hands, to be paid to the plaintiff upon a contingency.

Teſtator promiſed to pay the ſame accordingly.

T. R. and after their intermarriage, to wit, on the twenty-eight day of *May* in the year of our Lord one thouſand ſeven hundred and ſeventy-five, there had notice; whereby the ſame ſum of twenty one pounds, at the expiration of the ſaid two years mentioned in the ſaid articles, being after the death of the ſaid *T. R.* become due and payable by the ſaid *T. M.* and *M.* after their intermarriage to the ſaid *W. And whereas* the ſaid *T. R.* in his life-time, to wit, on the ſaid twenty-firſt day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and fifty-nine, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *R. S.* at the ſpecial inſtance and requeſt of the ſaid *T. R.* and by the direction and appointment of the ſaid *W. S.* had depoſited and placed in the hands of the ſaid *T. R.* another ſum of twenty-one pounds, mentioned to be paid in certain other articles between the ſaid *W.* and *R. S.* bearing date the ſixteenth day of *May* then laſt paſt, took upon himſelf, and then and there faithfully promiſed the ſaid *W.* to pay him the ſaid *W.* the ſaid ſum of money laſt mentioned at the time mentioned in the laſt mentioned articles, in caſe the ſaid *R. S.* did not depart this life before he had ſerved one year of his time mentioned in the ſame articles; and the ſaid *W.* doth aver, that the ſaid *R. S.* did not depart this life before he had ſerved one year of his time mentioned in the laſt mentioned articles, but is ſtill alive, and that the time mentioned in the ſame articles for the payment

payment of the ſaid laſt mentioned ſum of twenty-one pounds, was expired on the ſixteenth day of *May* in the year of our Lord one thouſand ſeven hundred and ſeventy-one, after the death of the ſaid *T. R.* and after the intermarriage of the ſaid *T. M.* and *M.* to wit, at *London* aforeſaid in the pariſh and ward aforeſaid, of which the ſaid *T. M.* and *M.* afterwards, to wit, on the ſaid twenty-eighth day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and ſeventy-one there had notice, whereby the ſaid ſum of twenty-one pounds laſt mentioned became due and payable by the ſaid *T. M.* and *M.* to the ſaid *W. And whereas* the ſaid *T. R.* in his life-time, to wit, on the ſaid ſixteenth day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and fifty-nine, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *W.* at the ſpecial inſtance and requeſt of the ſaid *T. R.* had then and there agreed that another ſum of twenty-one pounds ſhould be depoſited in the hands of the ſaid *T. R.* which ſaid ſum of twenty-one pounds laſt mentioned was ſo depoſited in the hands of the ſaid *T. R.* took upon himſelf, and then and there faithfully promiſed the ſaid *W. S.* to pay him the laſt mentioned ſum of money at the end and expiration of two years next after the ſaid ſixteenth day of *May* in the year laſt mentioned, in caſe one *R. S.* who was bound apprentice to the ſaid *W. S.* on the day and year laſt mentioned for the term of two years then next

next following, did not die before he had ſerved one year of his apprenticeſhip; and the ſaid *W. S.* doth aver, that the ſaid *R. S.* did not die before he had ſerved one year of his apprenticeſhip, but is yet alive, to wit, at *London* aforeſaid in the pariſh and ward aforeſaid; and that the ſaid *T. R.* died before the end and expiration of the ſaid two years next after the ſaid ſixteenth day of *May* in the year laſt mentioned, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid, whereby the ſaid ſum of money laſt mentioned, at the end and expiration of the ſaid two years which happened after the intermarriage of the ſaid *T. M.* and *M.* became due and payable by the ſaid *T. M.* and *M.* to the ſaid *W. S.* *Neverthelefs* the ſaid *T. M.* and *M.* not regarding the ſaid ſeveral promiſes and undertakings of the ſaid *T. R.* made as aforeſaid, but contriving and fraudulently intending to deceive and defraud the ſaid *W. S.* in this behalf, have not, nor hath either of them paid the ſaid ſeveral ſums of money, or any part thereof, to the ſaid *W. S* (although the ſaid *T. M.* and *M.* on the ſaid twenty-eighth day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and ſeventy-one, and often after, at *London* aforeſaid in the pariſh and ward aforeſaid, were requeſted by the ſaid *W.* ſo to do) but have hitherto already refuſed and ſtill do refuſe to pay him the ſame: Wherefore he ſaith that he is damnified to the value of forty pounds: And therefore he brings ſuit, *&c.* Breach.

And

Imparlance. *And* now at this day, that is to ſay, *Friday* next after the morrow of *All Souls*, in this ſame term, until which day the ſaid *T. M.* and *M.* had leave to imparle to the ſaid bill, and then to anſwer the ſame as they ſhould be adviſed, before our lord the king at *Weſtminſter* come as well the ſaid *W.* by his ſaid attorney, as the ſaid *T. M.* and *M.* by *C. B.* their attorney: *And* the ſaid *T. M.* and *M.* defend the wrong and injury, when and ſo forth; and the ſaid *T.* and *M.* proteſting that the declaration aforeſaid, and the matter therein contained, are not ſufficient in law for the ſaid *W. S.* to have or maintain his aforeſaid action againſt them; for plea nevertheleſs they ſay, that the ſaid *T. R.* in his life-time did not take upon himſelf and promiſe in manner and form as the ſaid *W. S.* above complains againſt the ſaid *T. M.* and *M.* and of this they put themſelves upon the country; *And* the ſaid *W.* doth the like: *Therefore* let the jurors come before our lord the king at *Weſtminſter*, on next after and who are in no wiſe related to the ſaid *W.* or the ſaid *T. M.* and *M.* to make a certain jury of the country between the ſaid parties of the plea aforeſaid, to take cognizance on their oath of the whole truth of the premiſſes, becauſe as well the ſaid *T. M.* and *M.* as the ſaid *W.* between whom thereupon the matter in variance is, have put

Special non aſſumpſit.

Iſſue.

Venire awarded.

† No ſuch return. See *Vol.* 1. *p.*

them-

themſelves upon that jury. The ſame day is given to the ſaid parties at the ſame place, &c.

London, *to wit.* L. *A.* complains of *T. L.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, for that whereas the ſaid *T.* after the firſt day of *May* in the year of our Lord one thouſand ſeven hundred and five, to wit, on the thirtieth day of *July* in the year of our Lord one thouſand ſeven hundred and ſeventy-three, at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, made a certain note in writing with his own hand ſubſcribed thereto, bearing date the ſame day and year laſt mentioned, and then and there delivered the ſaid note to one *J. W.* by which ſaid note the aforeſaid *T.* promiſed to pay the ſaid *J. W.* by the name of Mr. *J. W.* or his order, the ſum of *fifty pounds for value received*; and the ſaid *J. W.* afterwards, and before the payment of the ſaid fifty pounds, or any part thereof, to wit, the thirtieth day of *Auguſt* in the year laſt mentioned, at *London* aforeſaid in the pariſh and ward aforeſaid, by a certain indorſement in writing then and there made on the ſaid note, and then and there ſubſcribed with the proper hand of the ſaid *J. W.* aſſigned the aforeſaid note to the ſaid *L. A.* and by the ſaid indorſement ordered and appointed the aforeſaid *T. L.* to pay to the ſaid *L. A.* the ſaid ſum of fifty pounds in the aforeſaid note ſpecified

Indorſee of a promiſſory note againſt the drawer.

ſpecified according to the form and effect of the ſame note, whereof the ſaid *T. L.* afterwards, to wit, the day and year laſt aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, had notice; by reaſon whereof, and alſo by force of the ſtatute in that caſe made and provided, the ſaid *T. L.* became chargeable and liable to pay to the aforeſaid *L. A.* the ſame ſum of fifty pounds mentioned in the aforeſaid note, according to the form and effect of the ſaid note and indorſement; and the ſaid *T. L.* being ſo chargeable, in conſideration thereof, afterwards, to wit, the day and year laſt aboveſaid, at *London* aforeſaid in the pariſh and ward aforeſaid undertook, and to the ſaid *L. A.* then and there faithfully promiſed, that he the ſaid *T. L.* would well and faithfully pay and content to the ſaid *L. A.* the aforeſaid ſum of fifty pounds in the ſaid note mentioned, according to the tenor and effect of the ſaid note and indorſement: *Neverthelefs, ut antea, fol.*

Breach.

Pledges, *&c.* { *John Doe,* and *Richard Roe.*

Of

Of the term of the Holy Trinity *in the ſixteenth year of the reign of king* George *the third.*

Roll. *Ventris.*

Berkſhire, to wit. BE *it remembered*, that on *Friday* next after the morrow of the Holy *Trinity* in this ſame term before our lord the king at *Weſtminſter* comes Sir *J. R.* knt. by *J. S.* his attorney, and brings here in the court of our ſaid lord the king his certain bill againſt *R. W.* eſq; of a plea of treſpaſs on the caſe; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words, to wit, *Berkſhire*, Sir *J. R.* knt. complains of *R. W.* eſq; in the cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lord the king, before the king himſelf, for that *whereas* on the tenth day of *December* in the year of our Lord one thouſand ſeven hundred and ſeventy-five, at the pariſh of *Thacham* in the county of *Berks*, a certain diſcourſe was had between the ſaid Sir *J. R.* and the ſaid *R.* whether the ſaid Sir *J. R.* was then intitled to a manor called the manor of *Henwick* in the pariſh of *Thacham* in the county of *Berks*, or not; and upon that diſcourſe the ſaid Sir *J.* did then and there affirm, that he the ſaid Sir *J.* was then intitled to a manor called the manor of *Henwick* in the pariſh of *Thacham* in the county of *Berks*, which ſaid affirmation

Memorandum of the ſame term.

Declaration on ſeveral iſſues out of Chancery.

1. Whether the plaintiff was intitled to a manor called the manor of H.

of the ſaid Sir *J.* the ſaid *R.* did then and there deny: And thereupon the ſaid *R.* afterwards, to wit, on the day and year aforeſaid, at the pariſh of *Thacham* aforeſaid, in conſideration that the ſaid Sir *J.* at the ſpecial inſtance and requeſt of the ſaid *R.* had paid into the hands of the ſaid *R.* five pounds of lawful money of *Great Britain*, took upon himſelf, and then and there faithfully promiſed the ſaid Sir *J.* to pay to the ſaid Sir *J.* the ſum of ten pounds of like lawful money, if the ſaid Sir *J.* was then intitled to a manor, called the manor of *Henwick* in the ſaid pariſh of *Thacham* in the county of *Berks*: And the ſaid Sir *J.* doth aver, that he the ſaid Sir *J.* was then intitled to a manor called the manor of *Henwick* in the ſaid pariſh of *Thacham* in the county of *Berks*, to wit, at the pariſh aforeſaid: *And whereas* afterwards, to wit, on the ſame day and year, at the pariſh aforeſaid, another diſcourſe was had between the ſaid Sir *J.* *R.* and the ſaid *R.* of and concerning certain lands called *Ham-Hill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Aſhmole-Green*, and *Day*'s, otherwiſe called *Woodage's Lane* in the pariſh aforeſaid, and whether the ſaid Sir *J.* *R.* was intitled to the ſaid lands, or to any of them, or to any part thereof, or not: Upon which ſaid laſt mentioned diſcourſe the ſaid Sir *J.* did then and there affirm, that he the ſaid Sir *J.* was then intitled to all the ſaid lands called *Ham-Hill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Aſhmole-Green*, and *Day*'s, otherwiſe called *Woodage's*

2. Whether the plaintiff was intitled to certain parcels of land, or to any and what part of them.

age's Lane, which the ſaid *R.* did then and there deny: And thereupon the ſaid *R.* afterwards, to wit, on the ſame day and year, at the pariſh aforeſaid, in conſideration that the ſaid Sir *J.* at the ſpecial inſtance and requeſt of the ſaid *R.* had paid into the hands of the ſaid *R.* ten pounds of like lawful money of *Great Britain*, took upon himſelf, and then and there faithfully promiſed the ſaid Sir *J.* to pay to the ſaid Sir *J.* the ſum of forty ſhillings of like lawful money, if the ſaid Sir *J.* was then intitled to the ſaid land called *Ham-Mill*, *Mill-pond Bank*, but if the ſaid Sir *J.* was then intitled only to part of the ſaid laſt mentioned land, then to pay to the ſaid Sir *J.* five ſhillings for every acre, and ſo in proportion for any leſs quantity than an acre thereof, to which the ſaid Sir *J.* was then ſo intitled, and the ſum of forty ſhillings of like lawful money, if the ſaid Sir *J.* was then intitled to the ſaid land called *Henwick Bowling-Green*; but if the ſaid Sir *J.* was then intitled only to part of the ſaid laſt mentioned land, then to pay to the ſaid Sir *J.* ſix ſhillings for every acre, and ſo in proportion for any leſs quantity than an acre thereof, to which the ſaid Sir *J.* was then ſo intitled; and the ſum of forty ſhillings of like lawful money, if the ſaid Sir *J.* was then intitled to the ſaid land called *Aſhmole Green*; but if the ſaid Sir *J.* was then intitled only to part of the ſaid laſt mentioned land, then to pay to the ſaid Sir *J.* ſeven ſhillings for every acre, and ſo in proportion for any leſs quantity

than an acre thereof, to which the ſaid Sir *J.* was then ſo intitled; and alſo the ſum of forty ſhillings of like lawful money, if the ſaid Sir *J.* was then intitled to the ſaid land called *Day*'s, otherwiſe called *Woodage's Lane*; but if the ſaid Sir *J.* was then intitled only to part of the laſt mentioned land, then to pay to the ſaid Sir *J.* eight ſhillings for every acre, and ſo in proportion for any leſs quantity than an acre thereof, to which the ſaid Sir *J.* was then ſo intitled; and the ſaid Sir *J.* doth aver, that he the ſaid Sir *J.* was then intitled to the lands called *Ham-Mill, Mill-pond Bank*, containing one acre; and to the ſaid land called *Henwick Bowling-Green*, containing three acres; and to the ſaid land called *Aſhmole-Green*, containing fifteen acres; and to the ſaid land called *Day*'s, otherwiſe called *Woodage's Lane*, containing one acre; whereby the ſum of eight pounds for the ſaid ſeveral parcels of land, and ſix pounds ſixteen ſhillings for the ſaid ſeveral acres, became due and payable by the ſaid *R.* to the ſaid Sir *J.* to wit, at the pariſh aforeſaid: *And whereas* afterwards, to wit, on the ſame day and year, at the pariſh aforeſaid, another diſcourſe was had between the ſaid Sir *J.* and the ſaid *R.* of and concerning the ſaid lands called *Ham-Mill, Mill-pond Bank, Henwick Bowling-Green, Aſhmole-Green*, and *Day*'s, otherwiſe called *Woodage's Lane*, and whether the ſaid lands, or any of them, or any part thereof, was then part of the waſte, or held of the manor of *Thacham* or not:

3. Whether the ſaid lands were part of the waſte of or held of the manor of T.

And thereupon the ſaid *R.* afterward, to wit, on the ſame day and year, at the pariſh aforeſaid, in conſideration that the ſaid Sir *J.* at the ſpecial inſtance and requeſt of the ſaid *R.* had paid into the hands of the ſaid *R.* five pounds of like lawful money, took upon himſelf, and then and there faithfully promiſed, that he the ſaid *R.* would pay to the ſaid Sir *J.* the ſum of one ſhilling of like lawful money, if the ſaid land called *Ham-Mill, Mill-pond Bank*, was not part of the waſte of the ſaid manor of *Thacham*, and the ſum of two ſhillings if the ſaid land was not held of the ſame manor, and the ſum of one penny for every acre of the ſaid land called *Ham-Mill, Mill-pond Bank*, and ſo in proportion for any leſs quantity than an acre thereof which is not part of the waſte, or held of the manor of *Thacham*; and the ſum of three ſhillings of like lawful money, if the land called *Henwick Bowling-Green* was not part of the waſte of the ſaid manor of *Thacham*; and the ſum of four ſhillings if the ſame land was not held of the ſame manor; and the ſum of two-pence for every acre of the ſaid land called *Henwick Bowling-Green*, and ſo in proportion for any leſs quantity than an acre thereof which is not part of the waſte or held of the ſaid manor of *Thacham*; and the ſum of five ſhillings of like lawful money, if the ſaid land called *Aſhmole-Green* was not part of the waſte of the ſaid manor of *Thacham*; and the ſum of ſix ſhillings, if the ſame land was not held of the ſame manor; and the ſum of three

pence for every acre of the ſaid land called *Aſhmole-Green*, and ſo in proportion for any leſs quantity than an acre thereof which is not part of the waſte or held of the manor of *Thacham*; and the ſum of ſeven ſhillings of like lawful money, if the land called *Day*'s, otherwiſe called *Woodage's Lane*, was not part of the waſte of the ſaid manor of *Thacham*, and the ſum of eight ſhillings, if the land was not held of the ſame manor; and the ſum of four-pence for every acre of the ſaid land called *Day*'s, otherwiſe *Woodage's Lane*, and ſo in proportion for any leſs quantity than an acre which is not part of the waſte, or held of the ſaid manor; and the ſaid Sir *J* doth aver, that the ſaid lands called *Ham-Mill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Aſhmole-Green*, and *Day*'s, otherwiſe called *Woodage's Lane*, or any of them, or any part thereof, was not part of the waſte or held of the ſaid manor of *Thacham*; whereby the ſum of thirty-ſix ſhillings for the ſaid ſeveral parcels of land, and the ſum of four ſhillings and eight-pence for the ſaid ſeveral acres, became due and payable by the ſaid *R.* to the ſaid Sir *J.* *Neverthelefs* the ſaid *R.* not regarding his ſaid ſeveral promiſes and undertakings made as aforeſaid, but contriving and fraudulently intending to deceive the ſaid Sir *J.* hath not yet paid to him the ſaid ſeveral ſums of money, or any part thereof, (although the ſaid *R.* afterwards, to wit, on the ſame day and year, and often after, at the pariſh aforeſaid was requeſted by the ſaid Sir *J.* ſo to do) but hath hitherto

hitherto altogether refuſed, and ſtill doth refuſe to pay him the ſame: Wherefore he ſaith, that he is damnified to the value of one hundred pounds; and therefore he brings ſuit, *&c.*

And the ſaid *R.* by *A. S.* his attorney, comes and defends the force and injury, when, *&c.* And ſaith it is true he did undertake and promiſe in manner and form as the ſaid Sir *J.* above complains againſt him; but as to the firſt promiſe and undertaking in the ſaid declaration above mentioned, the ſaid *R.* ſaith, that the ſaid Sir *J.* ought not to have or maintain his ſaid action therefore againſt him, becauſe he ſaith, that the ſaid Sir *J.* was not intitled to a manor called the manor of *Henwick* in the pariſh of *Thacham* in the county of *Berks*, as the ſaid Sir *J.* above declares: And of this he puts himſelf upon the country; and the ſaid Sir *J.* likewiſe: And as to the ſecond promiſe and undertaking in the ſaid declaration above mentioned, the ſaid *R.* ſaith, that the ſaid Sir *J.* ought not to have or maintain his ſaid action therefore againſt him; becauſe he ſaith that the ſaid Sir *J.* was not intitled to the ſaid lands called *Ham Mill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Aſhmole-Green*, and *Day*'s, otherwiſe called *Woodage's Lane*, or to any of them, or to any part thereof, as the ſaid Sir *J.* above declares: And of this he puts himſelf upon the country; and the ſame Sir *J.* likewiſe: And as to the laſt promiſe and undertaking in the ſaid declaration above contained, the ſaid *R.* ſaith,

Plea to the firſt promiſe.

To the ſecond.

To the laſt.

that the ſaid Sir *J.* ought not to have or maintain his ſaid action therefore againſt him, becauſe he ſaith, that all the ſaid lands called *Ham-Mill*, *Mill-pond Bank*, *Henwick Bowling-Green*, *Aſtmole-Green*, and *Day*'s, otherwiſe called *Woodage's Lane*, are part of the waſte, or held of the ſaid manor of *Thacham*: And of this he puts himſelf upon the country; and the ſaid Sir *J.* likewiſe, *&c.* Therefore as well to try the aforeſaid iſſue, as the ſeveral other iſſues above joined between the ſaid parties, let the jury come before our lord the king at *Weſtminſter*, on *Wedneſday* next after three weeks of the Holy *Trinity*, and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the aforeſaid parties, *&c.*

Venire to try the ſeveral iſſues.

Declaration by an indorſee againſt the drawer of an inland bill of exchange. Lill. Ent. 44.

London, *to wit.* *N. K.* complains of *E. P.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, for that, to wit, That *whereas* the ſaid *N.* and *E.* and one *J. P.* and *M. R.* now are, and at the time of making the bill hereafter mentioned, and long before, and ever ſince, were perſons reſiding and trading within this kingdom, to wit, at *London* aforeſaid, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, and ſo reſiding and trading, the ſaid *E.* on the ſixteenth day of *May* in the year of our Lord one thouſand ſeven hundred and ſeventeen, at *London* aforeſaid in the pariſh and ward aforeſaid, according to the uſage and cuſtom of merchants, from the time

to

to the contrary whereof the memory of man is not, there uſed and approved, made his certain bill of *Exchange* in writing, his proper hand being thereunto ſubſcribed, bearing date the ſame day and year, and then and there directed the ſaid bill to the aforeſaid *J. P.* by which bill the ſaid *E. requeſted the ſaid J. thirty days* after the date thereof, to pay to the ſaid *N. K.* or his order, forty pounds of lawful money of this kingdom, *for value received*, as by advice from the ſaid *E.* *And* the ſaid ſum of money being unpaid to the ſaid *N.* the ſaid *N.* afterwards, to wit, on the ſame day and year at *London* aforeſaid in the pariſh and ward aforeſaid, according to the aforeſaid uſage and cuſtom of merchants, indorſed the ſaid bill, his proper hand being thereunto ſubſcribed, and by the ſaid indorſement the ſaid *N.* appointed the contents of the ſaid bill to be paid to the ſaid *M. R.* or his order; *And* the ſaid *J.* afterwards, to wit, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, according to the ſaid uſage and cuſtom of merchants, had ſight of the ſaid bill ſo indorſed, and accepted the ſaid bill to be paid according to the tenor of the ſaid bill and indorſement; *But* the ſaid *J.* did not pay the ſaid *M.* the ſaid forty pounds, although the ſaid *J.* afterwards, to wit, on the firſt day of *July* in the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, was requeſted by the ſaid *M.* to pay the ſame: *And* afterwards, to wit, on the ſaid firſt day of *July* in

Plaintiff indorſes the bill.

Bill accepted.

Not paid.

Indorſed back to plaintiff.

in the year of our Lord aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid ſum of money being unpaid to the ſaid *M.* he the ſaid *M.* according to the ſaid uſage and cuſtom of merchants, indorſed the ſaid bill, his own proper hand being thereunto ſubſcribed, and by the ſaid indorſement the ſaid *M.* appointed the contents of the ſaid bill

Bill not paid. to be paid to the ſaid *N.* or his order; *And* the ſaid *N.* afterwards, to wit, on the ſaid firſt day of *July* in the year of our Lord aforeſaid, at *London* aforeſaid in the pariſh and ward aforeſaid, requeſted the ſaid *J.* to pay to him the ſaid *N.* the ſaid ſum of money, according to the tenor of the ſaid bill and indorſements, which the ſaid *J.* then and there intirely refuſed to do; and the ſaid *J.* never paid the ſaid forty pounds to the ſaid *N.* of which the ſaid *E.* on the day and year laſt mentioned, at *London* aforeſaid in the pariſh and ward aforeſaid, had notice; by reaſon of which ſaid premiſſes, and alſo by force of the ſaid uſage and cuſtom of merchants, the ſaid *E.* according to the ſaid uſage and cuſtom of merchants, then and there became liable, to pay to the ſaid *N.* the ſaid ſum of money, according to the form and effect of the ſaid

Aſſumpſit. bill and indorſement; *And* being ſo liable the ſaid *E.* afterwards, to wit, on the ſaid firſt day of *July* in the year aforeſaid, in the pariſh and ward aforeſaid, undertook and then and there faithfully promiſed the ſaid *N.* to pay him the ſaid ſum of money, according to the form and effect of the ſaid bill and in-

Breach. dorſements: *Yet* the ſaid *E.* no ways, *&c.*

Eaſter

Eaſter *term in the ſixteenth year of the reign of king* George *the third.*

London, to wit. W. N. complaineth of *A. S.* being in the cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lord the king, before the king himſelf, of a plea, for *that whereas* at the ſeveral times hereafter mentioned, *T. F.* the elder, and *T. F.* the younger, were partners and joint dealers together; and the ſaid *W. N.* and *A. J.* were perſons reſiding, trading and uſing commerce within this kingdom, to wit, at *London* aforeſaid, in the pariſh of *St. Mary le Bow*, in the ward of *Cheap*; and being ſo reſpectively reſident and trading as aforeſaid, the ſaid *T. F.* the younger, for himſelf, and the ſaid *T. F.* the elder, his ſaid partner, on the third day of *January* in the year of our Lord one thouſand ſeven hundred and ſeventy-ſix, to wit, at *London* aforeſaid, at the pariſh and ward aforeſaid, made a certain bill of exchange, ſubſcribed with the proper hand-writing of the ſaid *T. F.* the younger, according to the cuſtom of merchants, from time immemorial uſed and approved of; *And* the ſame bill bearing date the ſame day and year aboveſaid, then and there directed to the ſaid *A. J.* by the name and deſcription of Mr. *A. J.* at *Grigſby*'s coffee-houſe, *London*; and by the ſaid bill the ſaid *T. F.* the younger, for himſelf, and the ſaid *T. F.* the elder, in their joint

Declaration on an inland bill of exchange, drawn by one for himſelf and partner, brought by the payee againſt the acceptor.

joint name, form and ſtile, to wit, in the name of *T. F.* and co. required the ſaid *A. J.* one month after date, to pay to the order of the ſaid *W.* by the name and deſcription of Mr. *W. N.* eighty-nine pounds and ſeventeen ſhillings, and place it to the account of them the ſaid *T. F.* the elder, and *T. F.* the younger, which ſaid bill of exchange, he the ſaid *A. J.* afterwards, and before the time appointed for the payment of the ſaid ſum of money contained in the ſaid bill, or any part thereof, to wit, the tenth day of *January* in the year aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, upon ſight thereof accepted according to the ſaid cuſtom, and by reaſon of the premiſſes, and according to the ſaid cuſtom and by the law of merchants, he the ſaid *A. J.* became liable to pay to the ſaid *W. N.* the ſaid ſum of money ſpecified in the ſaid bill according to the tenor and effect of the ſaid bill, and his ſaid acceptance thereof; and being ſo liable, he the ſaid *A. J.* in conſideration thereof afterwards, to wit, on the ſame day and year laſt aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *W. N.* to pay him the ſaid ſum of money mentioned in the ſaid bill, according to the tenor and effect of the ſaid bill, and of his ſaid acceptance thereof as aforeſaid. *And whereas alſo* the ſaid *A. J.* afterwards, to wit, on the firſt day of *March* in the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, was indebted

Indeb. aſſum. for money had and received.

to

to the ſaid *W. N.* in one hundred pounds of lawful money of *Great Britain*, for money by the ſaid *A. J.* before that time had and received to the uſe of the ſaid *W. N.* and being ſo indebted, he the ſaid *A. J.* in conſideration thereof, afterwards, to wit, on the ſame day and year laſt aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *W. N.* to pay him the ſaid laſt mentioned ſum of money, when he ſhould be thereto afterwards required: *Yet* the ſaid *A. J.* not regarding his aforeſaid ſeveral promiſes and undertakings, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *W. N.* in this particular, hath not paid the ſaid ſeveral ſums of money above mentioned, or any of them, or any part thereof, although to pay the ſame to the ſaid *W. N.* afterwards, to wit, on the ſame day and year laſt aboveſaid, and often afterwards, at *London* aforeſaid, in the pariſh and ward aforeſaid, was requeſted by the ſaid *W. N.* but he to pay the ſame to the ſaid *W. N.* hath hitherto altogether refuſed, and ſtill refuſes, to the ſaid *W. N.* his damage of one hundred and eighty pounds; and therefore he brings his ſuit, *&c.* Breach.

C. ——— for plaintiff.
W. ——— for defendant.

Pledges to proſecute { *John Doe*, and *Richard Roe.*

Eaſter

Eaſter *term in the ſixteenth year of king* George *the third.*

Declaration on a foreign bill of exchange by a ſecond indorſee againſt the acceptor of the bill. Lill. Ent. 55, 90.

London. S. *R.* complains of *W. C.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king before the king himſelf, for that, to wit, That *whereas* one *W. H.* on the twenty-ſecond day of *April* in the year of our Lord one thouſand ſeven hundred and ſeventy-one, and long before and after, was a merchant reſiding and trafficking at *Middleburg* in parts beyond the ſeas; and whereas the ſaid *W. C.* was and ſtill is a merchant reſiding and trafficking at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow*, in the ward of *Cheap*; and whereas the ſaid *W. H.* afterwards, to wit, on the ſame day and year aforeſaid, at *Middleburg* aforeſaid, according to the uſage and cuſtom of merchants, made a bill of exchange in writing, bearing date the ſame day and year aforeſaid, and the ſaid bill of exchange then and there ſubſcribed with his own proper hand by the name of *W. H.* and directed the ſaid bill to the ſaid *W. C.* merchant at *London* aforeſaid, and by the ſaid bill the ſaid *W. H.* requeſted the ſaid *W. C.* in ſix weeks after the date of the ſaid bill, to pay to the order of Mr. *J. B.* ſixty pounds ſterling for value received, as by advice from the ſaid *W. H.* *And alſo whereas* the ſaid *J. B.* afterwards, to wit, on the tenth day of *May* in the

Indorſed.

the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, by his indorſement, his proper hand being thereunto ſubſcribed, appointed the contents of the ſaid bill to be paid to one *J. C.* or order, value received; *And alſo whereas* the ſaid *J. C.* afterwards, to wit, on the ſaid tenth day of *May* in the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, by his indorſement, his proper hand being hereunto ſubſcribed, appointed the contents of the ſaid bill to be paid to the ſaid *S. R.* *And alſo whereas* the ſaid *W. C.* to whom the ſaid bill of exchange was ſo as aforeſaid directed, afterwards, to wit, on the ſame day and year laſt above mentioned, at *London* aforeſaid, in the pariſh and ward aforeſaid, according to the ſaid uſage and cuſtom of merchants, accepted the ſaid bill to pay the ſaid ſixty pounds ſterling, in the ſaid bill mentioned, to the ſaid *S. R.* according to the tenor and effect of the ſaid bill, whereof the ſaid *W. C.* afterwards, to wit, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, had notice; by reaſon of which ſaid premiſſes, and according to the ſaid uſage and cuſtom of merchants, the ſaid *W. C.* became and now is liable to pay to the ſaid *S. R.* the ſaid ſixty pounds ſterling in the ſaid bill contained *, according to the tenor and

Indorſed again to plaintiff.

Defendant accepts the bill.

* Bill of exchange preſented to and accepted by the drawee after the time it was made payable; on an action againſt him the plaintiff declared, that the defendant

and effect of the ſaid bill and the indorſements
Aſſumpſit. thereon made as aforeſaid; *And* the ſaid *W. C.* being ſo liable, afterwards, to wit, on the ſame day and year laſt above mentioned, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *S.* to pay him the ſaid ſum of money in the ſaid bill contained, according to the tenor and effect
Breach. of the ſaid bill: *Yet* the ſaid *W. C.* no ways, *&c. Vide poſtea.*

Eaſter *term in the ſixteenth year of king* George *the third.*

Memorandum of a precedent term.

London, *to wit.* BE *it remembered*, That in the term of *St. Hilary* laſt paſt, before our lord the king at *Weſtminſter*, came *W. D.* by *G. J.* his attorney, and brought in the court of our ſaid lord the king then there his certain

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dant undertook to pay the money according to the tenor and effect of the bill aforeſaid. Iſſue, and verdict for the plaintiff. Moved in arreſt of judgment, that it was impoſſible the defendant could pay the money according to the tenor of the bill, becauſe the bill was not preſented or accepted till about a year after the day on which the money was payable by the tenor.

But by the court: The acceptance, though after the day the money was payable, is binding; and as for the words "according to the tenor and effect of the bill," the effect of the bill is the payment of the money, and not the day of payment, or at moſt this is but ſurpluſage. Judgment for the plaintiff. *Carth.* 459.

bill

bill againſt *E. P.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea of treſpaſs upon the caſe; and there are pledges of proſecuting, namely, *John Doe* and *Richard Roe*; which ſaid bill followeth in theſe words, to wit, *London*, to wit, *W. D.* complains of *E. P.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, for this, to wit, That *whereas* the ſaid *E. P.* and one *J. T.* now deceaſed, on the ninth day of *May* in the year of our Lord one thouſand ſeven hundred and ſeventy-five, being merchants at *Sereleon* in parts beyond the ſeas, to wit, at *London* aforeſaid, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by their bill of exchange in writing, ſubſcribed with their proper hands, and directed to the committee of the *Gamboa* company, required and appointed the ſaid committee to pay to the ſaid *W.* or his order, on ſight of the ſaid bill, their ſecond or third bill of the ſame time or date with the ſaid bill not being paid, the ſum of ſixty-five pounds and four thillings, being for the like value there received: *And alſo whereas* afterwards, to wit, on the firſt day of *September* in the year laſt aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid bill of exchange was ſhewed to the ſaid committee of the *Gamboa* company, and the ſaid committee then and there was requeſted to accept the ſaid bill according to the uſage of merchants, and to make payment of

Declaration on a foreign bill of exchange by the drawee againſt the ſurviving drawer. Lutw. 946, 950.

Bill tendered.

the ſaid ſixty-five pounds and four ſhillings to the ſaid *W.* according to the form and effect of the ſaid bill: *And alſo whereas* the ſaid committee then and there refuſed to accept the ſaid bill, and to pay the ſaid ſixty-five pounds and four ſhillings, the ſaid ſecond and their bill, or either of them, being then and there not accepted nor paid; by reaſon of which ſaid premiſſes, according to the uſage between merchants, from the time to the contrary whereof the memory of man is not, uſed and approved, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid *E.* and *J.* ought to have paid the ſaid ſixty-five pounds and four ſhillings to the ſaid *W.* the ſaid *E.* and *J.* in conſideration of the premiſſes, then and there undertook, and to the ſaid *W.* then and there faithfully promiſed to pay to the ſaid *W.* the ſaid ſixty-five pounds and four ſhillings, when they ſhould be thereunto afterwards required: *Yet* the ſaid *E.* and *J.* in the life-time of the ſaid *J.* have not, nor has the ſaid *E.* ſince the death of the ſaid *J.* paid the ſaid ſixty-five pounds and four ſhillings to the ſaid *W.* although often required, *&c.* but the ſaid *E.* and *J.* in the life-time of the ſaid *J.* and the ſaid *E.* after the death of the ſaid *J.* refuſed to pay the ſame to the ſaid *W.* and the ſaid *E.* ſtill refuſes to pay him the ſame: *And alſo whereas* the ſaid *E.* and *J. T.* in the life-time of the ſaid *J.* to wit, on the ſaid ninth day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and ſeventy-five, at *London* aforeſaid, in the pariſh and ward aforeſaid,

Not accepted.

Aſſumpſit.

Breach.

Indeb. aſſ. for money had and received on a joint promiſe againſt the ſurvivor.

aforeſaid were indebted to the ſaid *W.* in other ſixty-five pounds and four ſhillings of lawful money of *Great Britain*, for ſo much money by the ſaid *E.* and *J.* in the life-time of the ſaid *J.* before that time had and received to the uſe of the ſaid *W.* and the ſaid *E.* and *J.* in conſideration thereof, then and there undertook, and then and there faithfully promiſed the ſaid *W.* that they the ſaid *E.* and *J.* would well and truly pay the ſaid ſixty-five pounds and four ſhillings to the ſaid *W.* when they ſhould be thereunto afterwards required: *Yet* the ſaid *E.* and *J.* in the life-time of the Breach.
ſaid *J.* not regarding their ſeveral promiſes and undertakings made in form aforeſaid, but contriving and fraudulently intending in this behalf craftily and ſubtilly to deceive and defraud the ſaid *W.* of the ſaid ſeveral ſums of money, the ſaid *E.* and *J.* or either of them in the life-time of the ſaid *J.* or the ſaid *E.* after the death of the ſaid *J.* have not, nor has either of them, paid the ſaid ſixty-five pounds and four ſhillings or any part thereof, to the ſaid *W.* although often requeſted, *&c.* but the ſaid *E.* and *J.* in the life-time of the ſaid *J.* and the ſaid *E.* after the death of the ſaid *J.* intirely refuſed to pay the ſaid ſixty-five pounds and four ſhillings to the ſaid *W.* and the ſaid *E.* ſtill refuſes to pay him the ſame, to the damage of the ſaid *W.* of two hundred pounds: And thereupon he brings ſuit, *&c. With this*, that Averment.
the ſaid *W. D.* will verify, that at the time of making the ſaid bill, and long before and

after, there was at *London*, to wit, at the pariſh and ward aforeſaid, a certain company of merchants called and known by the name of the committee of *Gamboa* company, to which ſaid company, by the aforeſaid name, bills of exchange have, during the whole time aforeſaid, been uſed to be directed according to the uſage and practice amongſt merchants.

Imparlance. *And* now at this day, to wit, *Wedneſday* next after fifteen days of *Eaſter* in this ſame term, to which day the ſaid *E. P.* had leave to imparle to the ſaid bill, and then to anſwer, *&c.* before our lord the king at *Weſtminſter*, came as well the ſaid *W. D.* as the ſaid *E. P.* and *D. S.* his attorney; and the ſaid *E.* defends the force and injury, when, *&c.*

Demurrer to the firſt count. *And as to* the firſt promiſe and undertaking in the ſaid declaration of the ſaid *W.* above-mentioned, he the ſaid *E.* prays judgment of the ſaid declaration, becauſe he ſays, that the ſaid declaration, and the matter therein contained, is not ſufficient in law to maintain the action of the ſaid *W.* thereupon againſt the ſaid *E.* to which ſaid declaration, as to the ſaid firſt promiſe and undertaking contained in the ſaid declaration of the ſaid *W.* the ſaid *E.* need not, nor is he bound by the law of the land in any manner to anſwer; and this he is ready to verify: Therefore for want of a ſufficient declaration in this behalf as to the ſaid firſt promiſe and undertaking in the declaration of the ſaid *W.* above-mentioned, the ſaid *E.* prays judgment, and that the ſaid *W.* may be barred from having his action againſt

againſt the ſaid *E.* thereupon as to the firſt promiſe and undertaking in the ſaid declaration of the ſaid *W.* above-mentioned: *And* as to the ſecond promiſe in the declaration of the ſaid *W.* above alſo mentioned, the ſaid *E.* ſays, that he did not undertake in manner and form as the ſaid *W.* hath above declared againſt him; and of this he puts himſelf upon the country; and the ſaid *W.* does ſo likewiſe, *&c.* *And* the ſaid *W.* ſays, that he by any thing by the ſaid *E.* above in pleading alledged, as to the firſt promiſe and undertaking in the ſaid declaration above-mentioned, ought not to be barred from having his action thereupon againſt the ſaid *E.* becauſe he ſays, that the ſaid declaration, and the matter therein contained as to the ſaid firſt promiſe and undertaking, are good and ſufficient in law to maintain the ſaid action of the ſaid *W.* thereupon againſt the ſaid *E.* which ſaid declaration, and the matter therein contained, the ſaid *W.* is ready to verify and prove as the court, *&c.* And becauſe the ſaid *E.* does not anſwer the ſaid declaration, nor has hitherto at all denied the ſame, the ſaid *W.* as before, prays judgment and his damages by occaſion of the premiſſes to be adjudged to him, *&c.* *But* becauſe the court of our ſaid lord the king now here are not adviſed of giving their judgment of and upon the premiſſes, whereon the ſaid parties have put themſelves upon the judgment of the court, a day is thereupon given to the ſaid parties before our lord the king at *Weſtmin-*

Non aſſump. to the reſt.

Iſſue thereon.

Joinder in demurrer.

Continuance.

ſter until *Friday* next after the morrow of the Holy *Trinity*, to hear their judgment of and upon the ſaid premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed, *&c.* *And* as well to try the ſaid iſſue between the ſaid parties above joined to be tried by the country, as to inquire what damages the ſaid *W.* has ſuſtained by occaſion of the ſaid premiſſes, whereupon the ſaid parties have put themſelves upon the judgment of the court, if judgment ſhall thereupon be given for the ſaid *W.* againſt the ſaid *E.* Let a jury come thereupon before our lord the king at *Weſtminſter*, at the aforeſaid day; and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid there, *&c.* *At which day* before our lord the king at *Weſtminſter* came as well the ſaid *W.* as the ſaid *E.* by their attornies aforeſaid; and the ſaid *W.* acknowledged here in court, that he would not further proſecute againſt the ſaid *E.* as to the ſecond promiſe and undertaking in his ſaid bill above-mentioned: *And as to* the ſaid firſt promiſe and undertaking in the ſaid declaration above-mentioned, whereupon the ſaid parties have put themſelves upon the judgment of the court, becauſe the court of our ſaid lord the king here are not yet adviſed of giving their judgment of and upon the premiſſes, a day is therefore given to the ſaid parties before our lord the king at *Weſtminſter* until * *Thurſday* next after three weeks of

Award of venire facias tam ad tri-and' quam ad inqui-rend'.

Nolle proſequi as to the ſecond count. 1 Plowd. 4. 20. Pract. Reg. 218, 220.

Continuance.

* No ſuch return now. See *Vol.* 1. *p.* —.

St.

St. Michael, to hear their judgment thereupon, for that the court of our ſaid lord the king now here is not yet adviſed, *&c. At which day* before our lord the king at *Weſtminſter* came the ſaid parties by their attornies aforeſaid: Whereupon the premiſſes as to the ſaid firſt promiſe and undertaking in the ſaid declaration above-mentioned, whereupon the ſaid parties have put themſelves upon the judgment of the court, being ſeen, and by the court of our ſaid lord the king now here fully underſtood; for that it ſeems to the court of our ſaid lord the king now here, that the ſaid declaration, and the matter therein contained as to the ſaid firſt promiſe and undertaking, are good and ſufficient in law to maintain the action of the ſaid *W.* thereupon againſt the ſaid *E.* It is conſidered that the ſaid *W.* ought to receive his damages againſt the ſaid *E.* *But* becauſe it is unknown to the court of our ſaid lord the king now here what damages the ſaid *W.* has ſuſtained by occaſion of the premiſſes; it is therefore commanded to the ſheriffs, that by the oath of twelve good and lawful men of their bailiwic they diligently inquire what damages the ſaid *W.* has ſuſtained, as well by occaſion of not performing the ſaid firſt promiſe and undertaking, as for his coſts and charges by him about his ſuit in this behalf expended; and that they ſend the inquiſition, which, *&c.* to our lord the king at *Weſtminſter* on *Friday* next after the octave of *St. Hilary*, under their ſeals, and the ſeals, *&c.* together

Judgment.

Award of inquiry of damages.

gether with the writ of our ſaid lord the king
The return. to them thereupon directed: The ſame day is given to the ſaid *W.* there, *&c. At which day* before our lord the king at *Weſtminſter* came the ſaid *W. D.* by his attorney aforeſaid; and the ſheriffs of *London*, to wit, and by virtue of the writ of our ſaid lord the king to them thereupon directed, return a certain inquiſition taken before them at the *Guildhall* of the city of *London*, ſituate in the pariſh of *St. Lawrence* in the *Old Jewry* in the ward of *Cheap* of the ſame city, on the twenty-ſecond day of *January* in the year of the reign of our ſoveregn lord *George* the third, now king of *Great Britain*, *&c.* by the oath of twelve good, *&c.* By which it appears that the ſaid *W. D.* has ſuſtained damages by occaſion of the ſaid premiſſes over and above his coſts and charges by him about his ſuit in this behalf expended, to eighty and nine pounds, and for theſe coſts and charges to twenty ſix ſhillings and eight-
Judgment thereon. pence: *It is therefore* conſidered, that the ſaid *W. D.* do recover againſt the ſaid *E. P.* his ſaid damages found by the ſaid inquiſition in form aforeſaid, and alſo nine pounds thirteen ſhillings and eight-pence, adjudged by the court of our ſaid lord the king now here to the ſaid *W.* by his aſſent, of increaſe, for his coſts and charges, which ſaid damages amount in the whole to one hundred pounds; and the ſaid *E.* in mercy, *&c.*

Judgment affirmed on error in the *Exchequer* chamber. *Lill. Ent.* 55.

Trinity

Trinity *term in the year of*, &c.

London, *to wit.* *W.* K. aſſignee of the debts, goods and effects of *T. W.* a bankrupt, according to the form of the ſeveral ſtatutes made concerning bankrupts, complains of *R. W.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, for that, to wit, That *whereas* the ſaid *R.* on the tenth day of *April* in the year of the reign of our ſovereign lord *George* the third, now king of *Great Britain*, at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was indebted to the ſaid *W.* as aſſignee in form aforeſaid in one hundred pounds of lawful money of *Great Britain*, for divers goods, wares and merchandizes, before that time ſold and delivered by the ſaid *T. W.* to the ſaid *R. W.* at his ſpecial inſtance and requeſt; and being ſo indebted, the ſaid *R.* in conſideration thereof, afterwards, to wit, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there promiſed the ſaid *W.* as aſſignee in form aforeſaid, that he the ſaid *R.* when he ſhould be thereunto required, would pay the ſaid one hundred pounds to the ſaid *W.* as aſſignee in form aforeſaid: *And alſo whereas* the ſaid *R.* afterwards, to wit, on the ſaid tenth day of *April* in the year aforeſaid, at *London*

Indeb. aſſ. by aſſignee of a bankrupt's eſtate for goods ſold and delivered by bankrupt.

Quant. val. thereon.

London aforeſaid, in the pariſh and ward aforeſaid, in conſideration that the ſaid *T. W.* had before that time ſold and delivered to the ſaid *R. W.* at his like ſpecial inſtance and requeſt, divers other goods, wares and merchandize, undertook, and then and there promiſed the ſaid *W.* as aſſignee in form aforeſaid, that he the ſaid *R.* when he ſhould be thereunto required, would pay to the ſaid *W.* as aſſignee in form aforeſaid, ſo much money for the ſaid goods, wares and merchandizes laſt mentioned, as the ſaid goods, wares and merchandizes were reaſonably worth at the time of the ſale and delivery thereof; and the ſaid *W.* avers, that the ſaid goods, wares and merchandizes laſt mentioned, were at the time of the ſale and delivery thereof, by the ſaid *T. W.* to the ſaid *R. W.* reaſonably worth other one hundred pounds of like lawful money of *Great Britain*, to wit, at *London* aforeſaid, at the pariſh and ward aforeſaid, of which the ſaid *R.* then and there had notice; *Yet* the ſaid *R.* not regarding his ſaid ſeveral promiſes and undertakings made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *W.* as aſſignee in form aforeſaid, in this behalf, has not paid the ſaid ſeveral ſums of money or any part thereof (although often required) to the ſaid *W.* nor any way contented him for the ſame; but to pay the ſame hath hitherto refuſed, and ſtill doth refuſe, to the damage of the ſaid *W.* of

twenty

twenty pounds; and thereupon he brings ſuit, &c.

Pledges, &c.

London, to wit. *J. F.* late of *Weſtminſter*, in the county of *Middleſex*, merchant, was attached to anſwer *J. A.* of a plea of treſpaſs on the caſe, &c. and whereupon the ſaid *J. A.* by his attorney, complains, *That whereas* the ſaid *J. F.* together with *D. B.* late of *Greenwich* in the county of *Kent*, feltmonger, which ſaid *D. B.* is in due manner outlawed in the court of our lord the king, before the king himſelf, on the firſt day of *Auguſt* in the year of our Lord one thouſand ſeven hundred and ſixty-eight, at *London*, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was indebted to the ſaid *J. A.* in one hundred and forty pounds eight ſhillings and eight-pence of lawful money of *Great Britain*, for divers goods, wares and merchandizes before that time ſold and delivered by the ſaid *J. A.* to the ſaid *J. F.* and the ſaid *D. B.* who, &c. at their ſpecial inſtance and requeſt; and being ſo indebted the ſaid *J. F.* and the aforeſaid *D. B.* who, &c. in conſideration thereof, afterwards, to wit, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *J. A.* that they the ſaid *J. F.* and the ſaid *D. B.* who, &c. would well and truly pay the ſaid one hundred and forty pounds eight ſhillings

Declaration againſt two partners, where one is outlawed and the other appears. Indeb. aſſ. for goods ſold and delivered.

lings and eight-pence to the ſaid *J. A.* when they ſhould be thereunto afterwards required; *Neverthelefs* the ſaid *J. F.* and *D. B.* who, *&c.* before the ſaid outlawry was had, contriving and fraudulently intending of the ſaid one hundred and forty pounds eight ſhillings and eight-pence craftily and ſubtilly to deceive and defraud the ſaid *J. A.* the ſaid one hundred and forty pounds eight ſhillings and eight-pence to the ſaid *J. A.* (although to do the ſame the ſaid *J. F.* and *D. B.* who, *&c.* before the ſaid outlawry was had, afterwards, to wit, on the firſt day of *Auguſt* in the ſaid year of our Lord one thouſand ſeven hundred and thirty-eight, and the ſaid *J. F.* often afterwards, at *London* aforeſaid, in the pariſh and ward aforeſaid, were required by the ſaid *J. A.*) have not, nor has either of them paid, nor have they nor has either of them any ways contented him for the ſame, but have hitherto intirely refuſed to pay the ſaid one hundred and forty pounds eight ſhillings and eight-pence to the ſaid *J. A.* or any ways content him for the ſame; and the ſaid *J. F.* ſtill refuſes to pay him the ſaid ſum, to the damage of the ſaid *J. A.* of one hundred and forty pounds; And thereupon he brings ſuit, *&c.*

Breach of promiſe.

To wit, *T. E.* complains of *T. S.* in the cuſtody of the marſhal, *&c.* for that, *That whereas* on the ſeventeenth day of *March* in the year of our Lord one thouſand ſeven hundred and ſixty-ſeven, and long before, one *R. R.*

Aſſumpſit by an indorſee againſt the maſter on a promiſſory note drawn

R. R. was a ſervant of the ſaid *T. S.* and by the ſaid *T. S.* then and long before uſually intruſted to ſign promiſſory notes for the ſaid *T. S.* his maſter, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid; and the ſaid *R.* being ſo intruſted as aforeſaid, on the ſame ſeventeenth day of *March* in the year of our Lord one thouſand ſeven hundred and ſixty-ſeven, at *London* aforeſaid, in the pariſh and ward aforeſaid, made for the ſaid *T. S.* a certain note in writing called a promiſſory note, bearing date the ſame day and year laſt mentioned, the proper hand and name of the ſaid *R.* being ſubſcribed to the ſaid note, and by the ſaid note the ſaid *R.* promiſed to pay to one *J. F.* or order, *ſix months after the date* of the ſaid note, eighty pounds, *value received*, for the ſaid *T. S.* maſter of the ſaid *R.* and the ſaid *T. E.* further ſays, that afterwards, and before payment or ſatisfaction of the ſaid ſum of eighty pounds in the ſaid note contained, to wit, on the twenty-fifth day of *March* in the year of our Lord one thouſand ſeven hundred and ſixty-eight, at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid *J.* by indorſement, his proper hand being indorſed on the ſaid note, appointed the contents of the ſaid note to be paid to the ſaid *T. E.* for value received; of which ſaid note ſo indorſed, and alſo of the ſaid indorſement, the ſaid *T. S.* afterwards, to wit, on the ſaid twenty-fifth day of *March* in the year of our Lord laſt above mentioned, at *London* aforeſaid, in the pariſh and ward aforeſaid, had

by and in the name of the ſervant for value received for his maſter.

Note indorſed.

had notice; and by virtue of the ſaid note and indorſement aforeſaid, and alſo by force of the ſtatute in ſuch caſe lately made and provided, the ſaid *T. S.* then and there became liable to pay the ſaid *T. E.* the ſaid eighty pounds in the note mentioned according to the tenor of the ſaid note; and being ſo liable the ſaid *T. S.* in conſideration thereof, afterwards, to wit, on the ſame day and year laſt above mentioned, at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid *T. E.* that he the ſaid *T. S.* would well and faithfully pay to the ſaid *T. E.* the ſaid eighty pounds according to the tenor of the ſaid note and indorſement: *Neverthelefs* the ſaid *T. S. &c.*

Pleas before our lord the king at Weſtminſter, *of the term of* St. Hilary *in the ſixteenth year of the reign of our ſovereign lord* George *the third, now king of* Great Britain, *&c.*

Roll 530.

Memorandum of the ſame term. 2 Barnard. B. R. 183, 374.

London, to wit. BE *it remembered*, that on *Monday* next after the octave of *St. Hilary* in this ſame term before our lord the king at *Weſtminſter* came the governor and company of the bank of *England*, by

their

their attorney, and brought here into the ſaid court of our lord the king then there, their bill againſt *C. M.* widow, executrix of the teſtament and laſt will of *H. M.* eſq; deceas'd, in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea of treſpaſs on the caſe; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words, to wit, *London*, to wit, The governor and company of the bank of *England* complains of *C. M.* widow, executrix of the teſtament and laſt will of *H. M.* eſq; deceas'd, in the cuſtody of the marſhal, &c. for that, to wit, *That whereas (the plaintiffs declare on thirty counts* ſur indeb. aſſumpſit *for various particular ſums of money lent, and money had and received to the plaintiffs uſe* alternatim, *and then declare as follows,) And alſo whereas* afterwards, to wit, on the ſame fifteenth day of *November* in the ſaid year of our Lord 1771, at *London* aforeſaid, in the pariſh and ward aforeſaid, he the ſaid *H.* in his life-time was indebted to the ſaid governor and company in 32000 *l.* of lawful money of *Great Britain*, for divers ſums of money before that time lent by the ſaid governor and company to the ſaid *H.* in his life-time; and being ſo indebted, the ſaid *H.* in his life-time, in conſideration thereof, afterwards, to wit, on the ſame fifteenth day of *November* in the ſaid year of our Lord 1771, at *London* aforeſaid, in the pariſh and ward aforeſaid, undertook, and then and there faithfully promiſed the ſaid

2 Str. 1002, 1028. Caſ. temp. Hardw. 165. See Andr. 110.

Declaration againſt an executrix.

31ſt count, indeb. aſſ. for money lent teſtator.

governor and company, that he the ſaid *H.* would well and truly pay the ſaid 32000*l.* to the ſaid governor and company, when he ſhould be thereunto afterwards required: *And alſo whereas* afterwards, to wit, on the ſame day and year laſt aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, he the ſaid *H.* in his life-time was indebted to the ſaid governor and company in other 32000*l.* of like lawful money of *Great Britain*, for divers ſums of money by him the ſaid *H.* in his life-time before that time had and received to the uſe of the ſaid governor and company; and being ſo indebted the ſaid *H.* in his life-time, afterwards, to wit, on the ſame day and year laſt aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration thereof, undertook, and then and there faithfully promiſed the ſaid governor and company, that he the ſaid *H.* would well and truly pay the ſaid 32000*l.* laſt mentioned to the ſaid governor and company, when he ſhould be thereunto afterwards required: *And alſo whereas* afterwards, to wit, on the ſame fifteenth day of *November* in the ſaid year of our Lord 1771, at *London* aforeſaid, in the pariſh and ward aforeſaid, he the ſaid *H.* in his life-time was indebted to the ſaid governor and company in other 32000*l.* of like lawful money of *Great Britain*, for money for the ſaid *H.* in his life-time, and at his ſpecial inſtance and requeſt, before that time expended, laid out and paid by the ſaid governor and company; and being ſo indebted, the ſaid *H.* in

32d count, indeb. aſſ. for money had and received by the teſtator.

33d count, indeb. aſſ for money laid out for teſtator.

in his life-time afterwards, to wit, on the ſame day and year laſt aboveſaid at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration thereof, undertook, and then and there faithfully promiſed the ſaid governor and company, that he the ſaid *H.* would well and truly pay the ſaid 32000*l.* laſt mentioned, to the ſaid governor and company, when he ſhould be thereunto afterwards required: *Yet* the ſaid *H.* in his life-time, and the ſaid *C.* after the death of the ſaid *H.* no ways regarding the promiſes and undertakings of the ſaid *H.* in his life-time made in form aforeſaid to the ſaid governor and company, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid governor and company, in this behalf, have not paid, nor has either of them paid the ſaid ſeveral ſums of money, or any part thereof, to the ſaid governor and company, (although the ſaid *H.* in his life-time, and the ſaid *C.* after the death of the ſaid *H.* to wit, on the 10th day of *December* in the ſaid year of our Lord 1771, and often afterwards at *London* aforeſaid, in the pariſh and ward aforeſaid, were requeſted by the ſaid governor and company;) but have intirely refuſed, and the ſaid *C.* ſtill refuſes to pay them the ſame: Whereupon the ſaid governor and company ſay, that they are injured and have damage to the value of 35000*l.* and thereupon they bring ſuit, *&c.* Breach.

And the ſaid *C.* by her attorney, comes and defends the force and injury, when, *&c.* and ſays, That the Plea.

ſaid governor and company ought not to have their ſaid action againſt her, becauſe ſhe ſays *that* the ſaid *H.* in his life-time, to wit, on the ſixth day of *March* in the year of our Lord 1767, at *London* aforeſaid, in the pariſh and ward aforeſaid, for his* true and juſt debt, by his certain writing obligatory ſealed with his ſeal, bearing date the ſame day and year, acknowledged himſelf to be bound to one Sir *W. M.* baronet, in 53000 *l.* of lawful money of *Great Britain*, to be paid to the ſaid Sir *W.* when he ſhould be thereunto afterwards requeſted, with a condition to the ſaid writing obligatory under written, that if the ſaid *H.* his heirs, executors or adminiſtrators, ſhould well and truly pay or cauſe to be paid unto the ſaid Sir *W.* his executors, adminiſtrators or aſſigns, the full ſum of 26500 *l.* of good and lawful money of *Great Britain*, with intereſt for the ſaid ſum after the rate of five pounds for a hundred pounds for a year, at and upon the ſeveral days and times and in manner and form following, that is to ſay, the ſum of 5000 *l.* part of the ſaid ſum of 26500 *l.* upon the twenty-fourth day of *June* which ſhould be in the year of our Lord 1728, together with all intereſt then due for the ſaid whole ſum of 26500 *l.* and the ſum of 5000 *l.* other part of the ſaid ſum of 26500 *l.*

A bond entered into by teſtator.

The condition ſet forth.

* Plea held to be good without averment, that it was for a true and juſt debt; for it ſhall be intended that the bond was given for a juſt debt. *Trin.* 3 *Jac.* 2. *B. R. Lake* v. *Raw*, *Carth.* 8.

with

with the intereſt for the ſame 5000 *l.* upon the twenty-fourth day of *June* which ſhould be in the year of our Lord 1769, together with the intereſt then likewiſe due for the ſum of 16500 *l.* the remainder of the ſaid ſum of 26500 *l.* then behind and unpaid, and the ſum of 5000 *l.* more thereof with the intereſt for the ſame ſum upon the twenty-fourth day of *June* which ſhall be in the year of our Lord 1770, together alſo with the intereſt then likewiſe due for the ſum of 11500 *l.* the remainder of the ſaid ſum of 26500 *l.* then behind and unpaid, and the further ſum of 5000 *l.* more thereof with the intereſt for the ſame, upon the twenty-fourth day of *June* which ſhould be in the year of our Lord 1771, together alſo with the intereſt then likewiſe due for the ſum of 6500 *l.* the remainder of the ſaid ſum of 26500 *l.* then behind and unpaid, and the like ſum of 5000 *l.* more thereof with the intereſt for the ſame upon the twenty-fourth day of *June* which ſhould be in the year of our Lord 1772, together alſo with the intereſt then likewiſe due for the ſum of 1500 *l.* the remainder of the ſaid ſum of 26500 *l.* then behind and unpaid, and the ſum of 1500 *l.* being the reſidue and remainder of the ſaid ſum of 26500 *l.* upon the twenty-fourth day of *June* which ſhould be in the year of our Lord 1773, together with the intereſt then due for the ſaid ſum of 1500 *l.* without fraud or further delay; then the ſaid obligation to be void and of no effect; but if default ſhould happen to be made in payment of any or either of the ſaid ſeveral and re-

ſpective ſums of money above mentioned, or of any part of any or either of them, or of any of the ſaid intereſt, or any or either of the ſaid ſeveral and reſpective days or times above limited or appointed for the payment thereof, contrary to the true intent and meaning of the ſaid condition, then the ſaid obligation to be and remain in full force and virtue; provided nevertheleſs, and the ſaid obligation was upon this further condition, that it ſhould be lawful for the ſaid *H. M.* his heirs, executors or adminiſtrators, to pay, ſatisfy and diſcharge the ſaid ſum of 26500 *l.* and intereſt or any part or parts thereof, in any ſhorter time or times than were in the ſaid condition before limited and appointed for the payment thereof, in payments of not leſs than 5000 *l.* at a time (except the laſt payment thereof) he the ſaid *H. M.* his heirs, executors or adminiſtrators, firſt giving ſix months notice in writing under his or their hand or hands unto the ſaid Sir *W. M.* his executors, adminiſtrators or aſſigns, of ſuch his or their intention ſo to do, at his the ſaid Sir *W. M.*'s then laſt place of abode, or if the ſaid Sir *W. M.* ſhould be then dead, to his executors or adminiſtrators*: And the ſaid *C.* further ſays, that the ſaid 5000 *l.* in the ſaid condition above mentioned to be pay-

Defendant ſets forth what is really due on the bond.

* The beſt way for an adminiſtrator is to plead honeſtly, and if there be a judgment for a penalty, in pleading thereof he ought to ſhew how much is due thereon. *Salk.* 312.

able

able upon the twenty-fourth of *June* in the year of our Lord 1772, and the ſaid 1500 *l.* in the ſaid condition above mentioned to be payable upon the twenty-fourth day of *June* in the year of our Lord 1773, together with the whole intereſt for the ſaid ſeveral ſums of 5000 *l.* and 1500 *l.* laſt mentioned due and payable from the twenty-fourth day of *June* in the year of our Lord 1771, are ſtill unpaid, and the ſaid writing obligatory ſtill remains in its full force and effect, no ways annulled, cancelled or ſatisfied; [*the defendant pleads another bond entered into by the teſtator as ſecurity for a third perſon, and goes on*] *And* the ſaid *C.* further ſays, that the ſaid *H.* afterwards in his life-time, to wit, on the twenty-ſeventh day of *July* in the eleventh year of the reign of his preſent majeſty, at *London* aforeſaid, in the pariſh and ward aforeſaid, for another true and juſt debt, by his certain other writing obligatory ſealed with his ſeal, bearing date the ſame day and year laſt aboveſaid, acknowledged himſelf to be bound to one *T. W.* eſq; in 5000 *l.* of like lawful money, to be paid to the ſaid *T.* when he ſhould be thereunto afterwards required, with a condition thereunder written for payment of 2500 *l.* of like lawful money, upon the twenty-ſeventh day of *July* in the year of our Lord 1771, with lawful intereſt for the ſame, to be made by the ſaid *H.* to the ſaid *T.* which ſaid 2500 *l.* together with the intereſt thereof from the ſaid 27th day of *July* in the ſaid year of our Lord 1771, were at the time of the death of the ſaid *H.* truly and juſtly due from the ſaid *H.*

Pleads another bond.

Sets forth the condition,

and the real debt due.

to the ſaid *T.* and are ſtill unpaid, and the ſaid writing obligatory laſt mentioned ſtill remains in its full force and effect, no ways annulled, cancelled or ſatisfied: *And* the ſaid *C.* further ſays, that the ſaid *H.* afterwards in his life-time, to wit, on the twenty-fifth day of *March* in the eleventh year of his preſent majeſty's reign, at *London* aforeſaid, in the pariſh and ward aforeſaid, for another true and juſt debt, by a certain other writing obligatory ſealed with his ſeal, bearing date the ſame day and year laſt above mentioned, acknowledged himſelf to be bound to one *D. C.* gentleman, in three thouſand pounds of like lawful money, to be paid to the ſaid *D.* when he ſhould be thereunto afterwards requeſted, with a condition thereunder written for payment of 1500*l.* of like lawful money, to be made by the ſaid *H.* to the ſaid *D.* upon or before the firſt day of *May* then next enſuing, with lawful intereſt for the ſame; which ſaid 1500*l.* together with the intereſt thereof from the twenty-fifth day of *September* in the year of our Lord 1771, were juſtly and truly due to the ſaid *D.* from the ſaid *H.* at the time of his death, and ſtill remain unpaid, and the ſaid writing obligatory laſt above mentioned ſtill remains in its full force and effect, no ways annulled, cancelled or ſatisfied: *And* the ſaid *C.* further ſays, that by certain articles indented on the firſt day of *Auguſt* in the year of our Lord 1767, at *London* aforeſaid, in the pariſh and ward aforeſaid, made between the ſaid *H. M.* in his life-time, by the name of *H. M.* of *London*, eſq; owner of the

Pleads another bond.

Sets forth the condition,

and the real debt.

Pleads articles entered into by teſtator with a maſter of one of his ſhips.

the good ſhip or veſſel called the *Martha Galley*, and of the cargo of goods ſhipped on board her, of the one part, and one *W. H.* by the name of *W. H.* of *Tooley-ſtreet* in *Southwark*, mariner, commander and ſupra-cargo of the ſaid ſhip, and one *N. S.* chief mate of the ſaid ſhip, of the other part, ſealed with the ſeal of the ſaid *H. M.* the date whereof is on the ſame day and year, reciting, That *whereas* the ſaid *W.* was then bound out in the ſaid ſhip as commander thereof, and ſupra-cargo of all the goods and merchandize loaden on board, in a certain voyage from *London* to the coaſt of *Africa*, and from thence to the *Weſt-Indies*, *Spaniſh Weſt-Indies*, and back to *London*, as the ſaid *H. M.* his correſpondents or aſſigns ſhould order and direct; which ſaid cargo of goods and merchandize were by invoice and bill of loading conſigned to the ſaid *W. H.* for ſale, and for purchaſing and making returns of the product thereof from the coaſt of *Africa* aforeſaid, in negroes, gold, elephants teeth, and ſuch other goods and merchandize as the coaſt of *Africa* ſhould afford; and which are expreſſed in the orders given by the ſaid *H. M.* to the ſaid *W. A.* And further reciting, That *whereas* the ſaid *N. S.* was likewiſe bound out in the ſaid ſhip on the ſaid voyage, as chief mate or next in command to the ſaid *W. H.* in commanding and navigating the ſaid ſhip, and in aſſiſting the ſaid *W. H.* in diſpoſing the ſaid outward cargo, and making returns for the ſame in manner in the ſaid articles afterwards expreſſed, they the ſaid *W. H.* and

N. S. by the ſaid articles, for themſelves, their executors and adminiſtrators, jointly and ſeverally covenanted and agreed with the ſaid *H. M.* his executors, adminiſtrators and aſſigns, that they the ſaid *W. H.* and *N. S.* or one of them, ſhould, and would at all times during the ſaid intended voyage, to the utmoſt of their power, knowledge and ſkill, endeavour to promote the intereſt and advantage of the ſaid *H. M.* and alſo ſhould and would, not only during the ſaid voyage, keep an exact and true account to be fairly written and entered in the book which the ſaid *H.* had provided and delivered to them for that purpoſe, of all their buyings, ſellings, barterings and dealings, and of all other tranſactions which ſhould be daily tranſcribed on account of the ſaid ſhip and cargo, but alſo, at the return of the ſaid ſhip into the river of *Thames* from the ſaid voyage, deliver or cauſe to be delivered up to the ſaid *H. M.* or his aſſigns, the ſaid book and the accounts fairly written and entered as aforeſaid: And further that they the ſaid *W. H.* and *N. S.* or one of them, ſhould not only load the ſhip, and carry on board the ſaid ſhip to the iſland of *Jamaica*, and there deliver to the ſaid *H. M.* his correſpondents, factors or aſſigns, (the dangers of the ſeas and mortality excepted) all ſuch negroes as ſhould be purchaſed by ſelling or bartering the ſaid cargo, or any part thereof; and alſo conſign ſuch part, and ſo much of the gold, elephants teeth, and other goods and merchandizes, as ſhould be purchaſed by ſelling or bartering the ſaid cargo,

or

or any part thereof, on board ſuch ſhip or ſhips, veſſel or veſſels, as they ſhould be directed or permitted by orders to be ſigned by the ſaid *H. M.* or his aſſigns, and ſhould and would bring home to *London* on board the ſaid ſhip called the *Martha Galley*, and conſign to the ſaid *H. M.* all ſuch and ſo much of the gold, elephants teeth, or other goods and merchandize, as ſhould be purchaſed by ſelling the ſaid outward cargo, or otherwiſe, which ſhould not by the order of the ſaid *H. M.* either be loaden on board any other ſhip, or delivered to the correſpondents of the ſaid *H. M.* at the iſland of *Jamaica* aforeſaid: And further, that he the ſaid *W. H.* ſhould and would ſign bills of loading for all ſuch goods as ſhould be loaden on board the ſaid ſhip called the *Martha Galley*, and ſhould and would, with what other bills of loading as ſhould be ſigned for ſuch commodities as ſhould be ſhipped on board any other veſſel or ſhip by order as aforeſaid, ſend and forward the ſame by the firſt opportunity unto the ſaid *H. M.* or his aſſigns, and ſhould and would, upon the ſaid ſhip's arrival at *London*, deliver unto the ſaid *H. M.* or his aſſigns, all ſuch gold, elephants teeth, and other goods and merchandizes as ſhould be loaded on board the ſaid ſhip called the *Martha Galley*, and not delivered at the iſland of *Jamaica* aforeſaid (the danger of the ſeas and reſtraint of princes and rulers in and during the ſaid voyage excepted): And further that they the ſaid *W. H.* and *N. S.* ſhould not, nor would export, carry or permit, or ſuffer to be

be carried by any other perſon or perſons whatſoever, in the ſaid ſhip, any other goods, commodities or merchandizes whatſoever for ſale, barter or traffick on the coaſt of *Africa*, other than the cargo of goods in the ſame articles before mentioned to be ſhipped on account of the ſaid *H. M.* (except ſuch adventures as the ſaid *H. M.* ſhould under his hand in writing allow them the ſaid *W. H.* and *N. S.* as in the ſaid articles was afterwards mentioned); but ſhould and would, from time to time, and at all times in and during the ſaid voyage, obſerve and keep all ſuch orders, directions and inſtructions touching or relating to the ſaid ſhip and cargo, as ſhould from time to time be given to them or either of them, by the ſaid *H. M.* or his aſſigns: And the ſaid *H. M.* for himſelf, his executors and adminiſtrators, did covenant and agree to and with *W. H.* his executors, adminiſtrators and aſſigns, by the ſaid articles, that he the ſaid *H. M.* his executors, adminiſtrators or aſſigns, ſhould and would give or allow to the ſaid *W. H.* four negroes out of every hundred and four as the ſaid *W. H.* ſhould purchaſe on the coaſt of *Africa*, and deliver alive unto the ſaid *H. M.* or his aſſigns at the iſland of *Jamaica* aforeſaid, in full ſatisfaction for purchaſing the ſame; and alſo ſhould and would, within forty days next after the arrival of the ſaid ſhip called the *Martha Galley* at *London*, well and truly pay, or cauſe to be paid unto the ſaid *W. H.* his executors, adminiſtrators or aſſigns, in full of all wages and all privileges whatſoever, the ſum of ſix pounds

ſterling

ſterling *per* calendar month for every calendar month which ſhould become due unto him according to the law, cuſtom and uſage among merchants in the like voyages, and ſo in proportion for a leſs time than a month, and the liberty of carrying four negroes in the ſaid ſhip from the coaſt of *Africa* to the iſland of *Jamaica* on his account freight-free: And further, that he the ſaid *H. M.* his executors, adminiſtrators or aſſigns, ſhould and would, within forty days next after the ſale and diſpoſal of ſuch homeward cargo as ſhould be brought to *London*, well and truly pay, or cauſe to be paid unto the ſaid *W. H.* his executors, adminiſtrators or aſſigns, for his commiſſion and factorage thereof, five pounds ſterling *per centum* to be reckoned on the net proceeds of all gold, elephants teeth, and other goods and commodities, as ſhould be returned to *London* for ſuch part of the outward cargo as ſhould by the books of account kept by the ſaid *W. H.* and *N. S.* appear to be purchaſed during the life-time of the ſaid *W. H.* cuſtom and other incident charges on account of the ſaid goods (freight excepted) being firſt thereout deducted: And further, that he the ſaid *W. H.* ſhould have liberty on his own account, and not otherwiſe, to carry in the ſaid ſhip the ſaid voyage any adventure whatſoever, as the ſaid *H. M.* ſhould allow him as aforeſaid; any thing in the ſaid articles contained to the contrary notwithſtanding: And for the true performance of every thing in the ſaid laſt mentioned articles contained on the part of the ſaid *H. M.* to be

With a penalty of 500l.

be paid, done and performed, the ſaid *H. M.* by the ſame articles bound himſelf, his executors and adminiſtrators, unto the ſaid *W. H.* and *N. S.* and each of them, their and each of their executors, adminiſtrators and aſſigns, in the penal ſum of 500 *l.* ſterling: And the ſaid *C.* further ſays, that the ſaid *W. H.* and *N. S.* after the making the ſaid articles, to wit, on the ſaid firſt day of *Auguſt* in the year of our Lord 1767 aforeſaid, ſet ſail in the ſaid ſhip called the *Martha Galley*, and ſailed from *London* aforeſaid to the coaſt of *Africa* aforeſaid, and from thence to the ſaid *Weſt-Indies* and *Spaniſh Weſt-Indies* aforeſaid, on the ſaid voyage; and afterwards, to wit, on the tenth day of *September* in the year of our Lord 1768, on the ſaid voyage came back, and ſafely arrived in the ſaid ſhip to *London* aforeſaid, in the pariſh and ward aforeſaid: And the ſaid *W. H.* afterwards died there, and that the ſaid *H. M.* in his life-time did not pay or cauſe to be paid to the ſaid *W. H.* in his life-time, or to *S. H.* widow, executrix of the teſtament and laſt will of the ſaid *W.* after his death, or to *S. W.* widow, executrix of the teſtament and laſt will of the ſaid *S.* after the death of the ſaid *S.* within forty days after the arrival of the ſaid ſhip at *London* aforeſaid, or at any time afterwards, the ſaid ſum of ſix pounds ſterling *per* calendar month, for thirteen calendar months, due and payable by the ſaid *H. M.* in his life-time to the ſaid *W. H.* and his executors, in full of the wages and privileges of him the ſaid *W. H.* in the ſaid voyage, according to the

That teſtator has not performed the articles.

What due thereon.

the law, uſage and cuſtom of merchants in the like voyages, or any part thereof, which he ought to have done according to the form and effect of the ſaid covenant of the ſaid *H.* in that behalf made; but all that money ſtill remains due and unpaid to the ſaid executrix of the ſaid *W. H.* And the ſaid *C.* further ſays, that afterwards, to wit, on the ſame day and year laſt mentioned, there were brought to *London* aforeſaid, to wit, in the pariſh and ward aforeſaid, and then and there delivered to the ſaid *H.* in his life-time, of the ſaid homeward cargo in the ſaid articles mentioned, 101 ounces, 12 pennyweight of gold, and four hundred, three quarters of a hundred, and eleven pounds weight of elephants teeth, which ſaid gold and elephants teeth were returned to *London* aforeſaid by the ſaid *W. H.* in his life-time for ſuch part of the ſaid homeward cargo as was purchaſed, and by the books of account kept by the ſaid *W. H.* and *N. S.* appeared to have been purchaſed in the life-time of the ſaid *W. H.* And that afterwards, to wit, on the ſame day and year laſt aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid gold and teeth were ſold and diſpoſed of by the ſaid *H. M.* in his life-time, and that the ſaid *H. M.* in his life-time did not pay or cauſe to be paid to the ſaid *W. H.* in his life-time, or to the ſaid *S.* and *S.* executrixes aforeſaid, or to either of them after his death, within forty days next after the ſale and diſpoſal thereof, or at any time afterwards, the ſum of 21*l.* 6*s.* What due and payable by the ſaid *H.* in his life-time thereon.

time to the ſaid *W. H.* and his executrixes, for the commiſſion and factorage of the ſaid *W. H.* according to the rate of 5 *l. per cent.* on the net proceeds of the ſaid gold and teeth, cuſtom and other incident charges (freight excepted) being thereout firſt deducted, or any part thereof, which he ought to have done according to the form and effect of his ſaid covenant in that behalf made; but the whole money laſt mentioned is ſtill due and unpaid, and the ſaid articles ſtill remain in their full force and effect no ways annulled, cancelled, or any ways ſatisfied; and the ſaid 500 *l.* in the ſaid articles mentioned ſtill remains not all paid or ſatisfied. [*The defendant in like manner pleads ſeveral other like articles, and then goes on.*] *And* the ſaid *C.* further ſays, that one *J. M.* on the ſixth day of *November* in the year of our Lord 1761, reſiding at *Amſterdam* in parts beyond the ſeas, and uſing commerce then and there, according to the uſage and cuſtom of merchants, made his certain bill of exchange bearing date the ſame day and year, the proper hand of the ſaid *J.* being thereunto ſubſcribed, and directed the ſaid bill to the ſaid *H.* in his life-time then reſiding at *London* aforeſaid, in the pariſh and ward aforeſaid, and uſing commerce, and by the ſaid bill required the ſaid *H.* at two uſances and eight days to pay that his firſt of exchange to Mr. *J. S.* or order 1987 *l.* 10 *s.* ſterling, for value received of the ſaid *J. S.* and to place the ſame to account, as by advice from him the ſaid *J.* and the

Articles in force.

Penalty unpaid.

Pleads a judgment recovered againſt her as executrix by the indorſee of a foreign bill of exchange drawn on and accepted by teſtator.

the ſaid *H.* afterwards in his life-time, to wit, on the tenth day of *November* in the year of our Lord 1771, old ſtile, at *London* aforeſaid, in the pariſh and ward aforeſaid, had ſight of the ſaid bill, and then and there, according to the uſage and cuſtom of merchants, accepted the ſaid bill, to pay the ſaid money in the ſaid bill contained, according to the tenor of the ſaid bill, which ſaid two uſances and eight days, according to the uſage and cuſtom of merchants at the ſaid time of making the ſaid bill, and alſo from the time to the contrary whereof the memory of man is not, have been and ſtill are two calendar months and eight days, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid; and afterwards in the life-time of the ſaid *H.* to wit, on the twelfth day of *November* in the ſaid year of our Lord 1771, old ſtile, at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid *J. S.* by his indorſement, his proper hand being thereunto ſubſcribed, made upon the ſaid bill according to the uſage and cuſtom of merchants, appointed the contents of the ſaid bill to be paid to one *J. M.* or order, whereof the ſaid *H.* afterwards in his life-time, to wit, on the ſame day and year laſt aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, had notice; and by reaſon thereof the ſaid *H.* in his life-time, according to the uſage and cuſtom of merchants, became liable to pay the ſaid *J. M.* the ſaid ſum of money in the ſaid bill contained, according to the tenor of the ſaid bill and indorſement; and being ſo liable the ſaid *H.*

afterwards

afterwards in his life-time, to wit, on the ſame day and year laſt aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, in conſideration thereof undertook, and then and there faithfully promiſed the ſaid *J. M.* to pay him the ſaid ſum of money according to the tenor of the bill and indorſement aforeſaid, which ſaid 1987 *l.* 10*s.* at the time of the death of the ſaid *H.* were by the ſaid *H.* truly and juſtly due and unpaid to the ſaid *J. M.* and the ſaid money is ſtill unpaid to him: And that the aforeſaid *J. M.* after the death of the ſaid *H.* for recovering his damages which he had ſuſtained by occaſion of the not paying the ſaid money, to wit, in this ſame term of *St. Hilary* in the fifth year of his preſent majeſty's reign, impleaded the ſaid *C.* as executrix of the teſtament of the ſaid *H.* in the court of our ſaid lord the king, before the king himſelf, the ſaid court then and now being at *Weſtminſter* in the ſaid county of *Middleſex*, by bill without writ in a certain plea of treſpaſs upon the caſe, upon undertaking upon the ſaid bill of exchange, to the damage of the ſaid *J. M.* of 2000 *l.* and it was in ſuch manner thereupon proceeded in the ſaid court of our ſaid lord the king, before the king himſelf at *Weſtminſter*, that he the ſaid *J. M.* afterwards, to wit, in this ſame term of *St. Hilary* in the fifth year aforeſaid, in the ſaid court of our ſaid lord the king, before the king himſelf at *Weſtminſter* aforeſaid, by the conſideration of the ſaid court, recovered againſt the ſaid *C.* 1992 *l.* 10*s.* for his damages which he had ſuſtained

as well by occaſion of the not performing the ſaid promiſe and undertaking, as for his coſts and charges by him about his ſuit in that behalf expended, to be levied of the goods and chattels which were of the ſaid *H.* at the time of his death in the hands of the ſaid *C.* to be adminiſtred, if ſhe had ſo much in her hands; and if ſhe had not ſo much, then 100 *s.* of the ſaid damages for the coſts and charges aforeſaid to be levied of the proper goods and chattels of the ſaid *C.* whereof the ſaid *C.* was convicted, as by the record and proceedings thereupon remaining in the ſaid court of our ſaid lord the king, before the king himſelf at *Weſtminſter* aforeſaid, more fully appears; which ſaid judgment ſtill remains in its full force and effect, no ways reverſed, annulled, or any ways ſatisfied, and the ſaid money by the ſaid judgment recovered is ſtill due and unpaid: *And* the ſaid *C.* further ſays, that ſhe has fully adminiſtered all the goods and chattels which were of the ſaid *H.* at the time of his death in her hands to be adminiſtered, except goods and chattels to the value of 1000 *l.* and that ſhe the ſaid *C.* has not, nor on the day of exhibiting the ſaid bill of the ſaid governor and company, nor at any time afterwards had, any goods or chattels which were of the ſaid *H.* at the time of his death, in the hands of her the ſaid *C.* to be adminiſtered, except the goods and chattels aforeſaid, to the ſaid value of 1000 *l.* which are liable to and charged with the payment and ſatisfaction of the ſaid ſeveral ſums due and payable by the ſeveral writings obligatory, articles and

Judgment in force.

Concluſion of the plea.

judgment aforeſaid: And this ſhe is ready to verify; wherefore ſhe prays judgment if the ſaid governor and company ought to have or maintain their ſaid action againſt her, *&c.*

Replication. *And* the ſaid governor and company ſay, that they by any thing above alledged ought not to be barred from having their ſaid action, becauſe they ſay, that the ſaid *C.* on the day of exhibiting the ſaid bill of the ſaid governor and company, had divers goods and chattels which were of the ſaid *H.* at the time of his death in her hands to be adminiſtered, over and above goods and chattels ſufficient to ſatisfy the ſaid ſeveral ſums due and payable by the ſeveral writings obligatory, articles and judgment aforeſaid, wherewith the ſaid *C.* could have ſatisfied the ſaid governor and company their ſaid damages aforeſaid, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid: And this they pray may be inquired of by the country; *And* the ſaid *C.* likewiſe. *And* upon this the ſaid governor and company ſay, That *T. P.* eſq; in his own proper right, has right, title and intereſt to part and ſhare of the principal ſtock of the ſaid governor and company, to the value of 1500 *l.* and now is a true proprietor of the ſaid ſtock, and that the ſaid *T. P.* is, and for the ſpace of three months laſt paſt has been, one of the members of the ſaid company; and that *S. R.* eſq; in his own proper right, has right, title and intereſt to part and ſhare of the principal ſtock of the ſaid governor and company, to the value of 1000 *l.* and now is a true proprietor of the ſaid ſtock, and that the

Iſſue.

Sheriffs challenged.

the ſaid *S. R.* is, and for the ſpace of three months laſt paſt has been, one of the members of the ſaid company; and that the ſaid *T. P.* and *S. R.* now are and for the ſpace of four months laſt paſt have been ſheriffs of *London* aforeſaid: And this they are ready to verify; and for that cauſe the ſaid governor and company pray the writ of our ſaid lord the king to cauſe to come here twelve, *&c.* to try the ſaid iſſue joined between the ſaid parties, to be directed to the coroners of the city of *London* aforeſaid; and becauſe the ſaid *C.* does not deny, but acknowledges the ſaid allegation of the ſaid governor and company, it is granted to them. *Therefore* let a jury thereupon come before our lord the king at *Weſtminſter* on *Saturday* next after the octave of the purification of the Bleſſed Virgin *Mary*, and who are in no wiſe of kin either to the ſaid governor and company, or to the ſaid *C.* to take cognizance upon their oaths of the whole truth of the premiſſes; becauſe as well the ſaid *C.* as the ſaid governor and company, have put themſelves upon that jury. The ſame day is given to the parties aforeſaid at the ſame place: *At* which day before our lord the king at *Weſtminſter* came the parties aforeſaid by their attornies aforeſaid; and the coroner of *London* did not return the ſaid writ, nor did he do any thing thereupon: *Therefore* let a jury thereupon, as before, come before our lord the king at *Weſtminſter* on *Wedneſday* next after fifteen days from the day of *Eaſter*, and who are in no wiſe of kin either

Venire to the coroner prayed and granted.

Venire facias.

Coronator non miſit breve.

Continuance.

either to the ſaid governor and company or to the ſaid *C.* to take cognizance upon their oaths of the whole truth of the premiſſes; becauſe as well the ſaid *C.* as the ſaid governor and company have put themſelves upon that jury. The ſame day is given to the parties aforeſaid at the ſame place: *At* which day before our lord the king at *Weſtminſter* came the parties aforeſaid by their attornies aforeſaid; and the coroner of *London* did not return the ſaid writ, nor did he do any thing thereupon: *Therefore, &c.* (the *venire facias* was continued in the ſame manner by *coronator non miſit breve*, to *Trinity* term 1774.)

Diſtringas. *Afterwards* the proceſs being continued between the parties aforeſaid of the plea aforeſaid, by the jury being reſpited between them before our lord the king at *Weſtminſter* until * *Wedneſday* next after three weeks from the day of *St. Michael* then next following, unleſs the king's right truſty and well beloved *Philip* lord *Hardwicke*, his chief juſtice aſſigned to hold pleas before the king himſelf, ſhall firſt come on *Friday* the fifth day of *July* at the *Guildhall* of the city of *London*, according to the form of the ſtatute in ſuch caſe made and provided, for default of the jurors, becauſe none of them did appear: At which day before our lord the king at *Weſtminſter* the aforeſaid governor and company come by the aforeſaid their attorney aforeſaid; and the

* No ſuch return at this day. See *Vol.* 1. *p.*

afore-

aforeſaid chief juſtice, before whom the ſaid iſſue was tried, ſent thither his record had in theſe words, *Afterwards*, that is to ſay, on the day and at the place within contained, before *Philip* lord *Hardwicke*, the chief juſtice within written, *C. H.* gent. being aſſociated unto the ſaid chief juſtice by force of the ſtatute in that caſe made and provided, came as well the within-named governor and company of the bank of *England* by their attorney within contained, as the within-named *C. M.* by her attorney within-named; and the jurors of that jury having been ſummoned likewiſe come, to wit, *S. M. R. B. J. R. J. A. J. A. G. M. J. L. B. B. H. D. S. B. P. S.* and *J. L. Q.* who being choſen, tried and ſworn to declare the truth of the iſſue within contained, upon their oath ſay, *That H. M.* within mentioned was at the time of his death, which happened on the ſixteenth day of *November* which was in the year of our Lord 1731, indebted to the plaintiffs the ſaid governor and company of the bank of *England*, in the ſum of 28993 *l.* 8*s.* 1*d.* for ſo ſuch money by the ſaid *H. M.* in his life-time had and received to the uſe of the ſaid plaintiffs; and the ſaid jurors upon their oath further ſay, that the money due at the death of the ſaid *H. M.* for principal money and intereſt of the ſums mentioned in the ſeveral conditions of the within mentioned bond from *H. M.* to Sir *W. M.* bart. and on the within mentioned bonds to *T. W.* and *D. C.* eſqrs. together with the ſeveral penal ſums of all the other ſpecialties within pleaded,

Poſtea.

Special verdict.

ed, and the money recovered by the judgment within pleaded, amount together to the ſum of 22182 *l.* 10*s.* which ſaid ſum of 22182 *l.* 10*s.* or any part thereof, was not paid at the time of pleading the within-contained plea of the ſaid defendant, but then remained due and unſatisfied, and that the defendant *C. M.* at the day of exhibiting the ſaid plaintiff's bill againſt her within-mentioned, had aſſets in her hands of the ſaid *H. M.* to the value of 41152 *l.* 2*s.* 5*d.* and the ſaid jurors upon their oath further ſay, that on the aforeſaid day of the death of the ſaid *H. M.* there was juſtly due and owing from him to the ſaid Sir *W. M.* of the ſum payable by the condition of his bond within-mentioned, and for all intereſt due by the ſaid condition, the ſum of 6530 *l.* and that there was due to the ſaid *T. W.* from the ſaid *H. M.* on the ſaid day of his death, for the principal ſum mentioned in the condition of his bond, and for all intereſt thereof, the ſum of 2520 *l.* and that there was due to the ſaid *D. C.* from the ſaid *H. M.* on the aforeſaid day of his death, for the principal ſum mentioned in the condition of his bond, and for all intereſt thereof, the ſum of 1540 *l.* as the ſaid *C. M.* has alledged in the plea within mentioned: And the ſaid jurors upon their oath further ſay, that on the day of exhibiting the ſaid plaintiffs bill againſt the ſaid *C. M.* ſhe the ſaid *C.* had not in her hands aſſets of the ſaid *H. C* ſufficient to diſcharge the penalties of the within mentioned three bonds

bonds to Sir *W. M. T. W.* and *D. C.* and that the ſaid penalties or any of them were not then paid, diſcharged or ſatisfied: And the ſaid jurors upon their oath further ſay, that deducting the above mentioned ſum of 22182 *l.* 10 *s.* out of the ſaid ſum of 41152 *l.* 2 *s.* 5 *d.* there remained in the hands of the ſaid *C. M.* on the day of exhibiting the plaintiffs ſaid bill againſt her, the ſum of 18969 *l.* 12 *s.* 5 *d.* aſſets of the ſaid *H. M.* liable to ſatisfy the aforeſaid debt of 28993 *l.* 8 *s.* 1 *d.* found due to the plaintiffs as aforeſaid, if the penal ſums in the aforeſaid three bonds to Sir *W. M. T. W.* and *D. C.* ought not in this caſe to be allowed as charges upon the aſſets of the ſaid *H. M.* but whether the ſaid three penal ſums ought to be allowed in this caſe as charges upon the ſaid aſſets or not, the ſaid jurors know not; and thereupon they pray the advice of the court here in the premiſſes; if upon the whole matter aforeſaid it ſhall appear to the court that the ſaid three penal ſums ought not in this caſe to be allowed as charges upon the ſaid aſſets, then the ſaid jurors upon their oath ſay, that as to the 32d promiſe laid in the plaintiff's declaration within mentioned, the within mentioned *H. M.* was indebted in his life-time and on the day of his death to the plaintiffs the governor and company of the bank of *England* in the ſaid ſum of 28993 *l.* 8 *s.* 1 *d.* being money had and received by the ſaid *H. M.* to the uſe of the ſaid plaintiffs, and aſſeſs their damages upon the aforeſaid 32d promiſe at 28993 *l.* 8 *s.* 1 *d.* and 40 *s.* for coſts; and further ſay,

that in ſuch caſe the within mentioned *C. M.* had, on the day of exhibiting the plaintiffs bill aforeſaid, aſſets in her hand of the ſaid *H. M.* liable to the demands of the ſaid plaintiffs to the value of 18969 *l.* 12 *s.* 5 *d.* and as to all the other promiſes mentioned in the plaintiffs declaration aforeſaid, they ſay, that the ſaid *H. M.* did not make ſuch other promiſes as therein mentioned, as the ſaid *C. M.* has by pleading alledged. But if upon the whole matter found it ſhall appear to the ſaid court, that the penal ſums in the ſaid three bonds ought in this caſe to be allowed as charges upon the ſaid aſſets, then the ſaid jurors ſay, that the within mentioned *C. M.* had not, on the day of exhibiting the ſaid plaintiffs bill againſt her, any aſſets of the ſaid *H. M.* in her hands liable to the demand of the ſaid plaintiffs, as ſhe the ſaid *C.* hath by her plea within alledged in her defence: *But* becauſe the court of our ſaid lord the king now here is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lord the king at *Weſtminſter*, on *Thurſday* next after the octave of *St. Hilary*, to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof.

Curia adviſare vult.

Wedneſday

Wedneſday *next after the octave of the purification of the Virgin* Mary *in the ſixteenth year of king* George *the third.*

IT is ordered, that judgment be entered for the plaintiffs, and the court being of opinion, that the penal ſums in the two bonds to *T. W.* and *D. C.* in the pleadings in this cauſe mentioned ought to be allowed as charges upon the aſſets of *H. M.* the defendant's teſtator, and the penal ſum in the bond to Sir *W. M.* in the ſaid pleadings alſo mentioned ought not to be ſo allowed, but that only the principal ſum of five thouſand pounds payable on the twenty-fourth day of *June* one thouſand ſeven hundred and ſeventy-two, and the farther ſum of one thouſand five hundred pounds, payable on the twenty-fourth day of *June* one thouſand ſeven hundred and ſeventy-three, mentioned in the condition of the ſaid bond to Sir *W. M.* with all intereſt for the two laſt mentioned ſums from the twenty-fourth day of *June* one thouſand ſeven hundred and ſeventy-one to the reſpective days of payment thereof, ought in this caſe to be allowed as charges upon the aſſets of the ſaid *H. M.* by the aſſent of the ſaid plaintiffs, the ſum of four thouſand three hundred and ten pounds being deducted out of the ſum of eighteen thouſand nine hundred and ſixty-nine pounds twelve ſhillings and five-pence in the ſaid pleadings alſo mentioned. *It is further ordered,*

Rule for judgment on the ſpecial verdict.

ordered, that judgment be entered for fourteen thouſand ſix hundred and fifty-nine pounds twelve ſhillings and five-pence, aſſets of the ſaid *H. M.* in the hands of the ſaid defendant. Upon the motion of Mr. *Strange*.

By the court.

Michaelmas *term in the* *year of, &c.*

For words ſpoke of a dyer in the way of his trade.

London, to wit. *W. H.* complains of *S. F.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, for that, to wit, That *whereas* the ſaid *W. H.* is a good, true, faithful, credible and honeſt ſubject and liegeman of our ſaid lord the now king, and has from his birth hitherto behaved and carried himſelf as a good, true, faithful and honeſt ſubject; and whereas the ſaid *W.* now uſes and exerciſes, and for the ſpace of ſeveral years laſt paſt has uſed and exerciſed the art or myſtery of a dyer, and now is, and for divers years laſt paſt has been a freeman of the city of *London*, and the ſaid art and myſtery in buying, ſelling, bargaining, working, labouring, and other ſuch-like things belonging to the ſaid art or myſtery of a dyer, with divers ſubjects of our ſaid lord the king, as well within the ſaid city as elſewhere within the kingdom of *Great Britain*, for the whole time aforeſaid has uſed and exerciſed, and ſtill exerciſes

ercises without any falsity, fraud, theft, felony or other noxious crime, stain or question or suspicion whatsoever, and has behaved himself honestly and justly in all his affairs, contracts and businesses, and obtained and got great gain and profit by the way of buying, selling, bargaining, working and labouring in the said art or mystery of a dyer, to the handsome maintenance of the said *W. H.* and his family, and very great increase of his riches; yet the said *H.* not being ignorant of the premisses, but greatly envying the said happy state of the said *W. H.* and contriving and most wickedly intending intirely to deprive the said *W. H.* of his good name, fame, credit and reputation, and also to bring him into an ill name, fame, discredit and extreme displeasure among his neighbours and other subjects of our said lord the present king, by whom the said *W. H.* is known, and to damage him in his business, on the seventh day of *July* in year of the reign of our said lord the present king, at *London* aforesaid, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, having discourse with divers subjects of our said lord the present king, concerning the said *W. H.* and his art or mystery aforesaid, openly said, and with a loud voice pronounced of the said *W. H.* in the presence and hearing of divers subjects of our lord the present king, certain false, feigned, scandalous, opprobrious and defamatory words, purporting, that the said *W. H.* used to defraud them, who intrusted him

Verba purportantia.

him with their goods to be dyed in his ſaid art of a dyer, of ſuch their goods, and converted the ſame to his own proper uſe: *And alſo whereas* the ſaid *S.* of his further malice, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, having diſcourſe with divers ſubjects of our ſaid lord the preſent king concerning the ſaid *W. H.* and his ſaid art and myſtery openly in the preſence and hearing of the ſaid ſeveral ſubjects of our ſaid lord the preſent king, ſaid of the ſaid *W. H.* that the ſaid *W.* uſed to defraud thoſe, who intruſted him with their goods to be dyed in his ſaid art of a dyer, of ſuch their goods, and convert the ſame to his own proper uſe: *And alſo whereas* one *W. H.* had intruſted the ſaid *W. H.* with two pieces of ſhalloon to be dyed by the ſaid *W. H.* in his ſaid art of a dyer, the ſaid *S.* of his further malice, on the ſame day at *London* aforeſaid, in the pariſh and ward aforeſaid, having converſation of the ſaid *W. H.* ſpoke of the ſaid *W. H.* in the preſence and hearing of divers ſubjects of our ſaid lord the preſent king, other falſe, ſcandalous and opprobrious words, purporting, that the ſaid *W. H.* had taken off the ſeals from the ſaid two pieces of ſhalloon, with intent to defraud the ſaid *W. H.* and that the ſaid *W.* after the ſaid two pieces were dyed, ſold the ſame to one Mr. *S.* for his the ſaid *W. H.*'s own uſe: *And alſo whereas* the ſaid *W. H.* had intruſted the ſaid *W. H.* with two other pieces of ſhalloon to be dyed by the ſaid *H.* in his ſaid art of a dyer, the ſaid

Verba purportantia.

S. of his further malice, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, having diſcourſe concerning the ſaid *W. H.* openly in the preſence and hearing of divers ſubjects of our ſaid lord the preſent king, ſaid of the ſaid *W. H.* that the ſaid *W. H.* had taken off the ſeals from the ſaid two pieces of ſhalloon, with intent to defraud the ſaid *W. H.* and that the ſaid *W. H.* after the ſaid two pieces were dyed, ſold the ſame to one Mr. *S.* for his the ſaid *W. H.*'s own uſe: *And whereas* one *J. B.* had intruſted the ſaid *W. H.* with one piece of ſhalloon to be dyed by the ſaid *W. H.* in his ſaid art of a dyer, the ſaid *S.* afterwards of his further malice, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, having diſcourſe concerning the ſaid *W. H.* in the preſence and hearing of divers ſubjects of our ſaid lord the preſent king, ſaid certain other falſe, ſcandalous and opprobrious words of the ſaid *W. H.* purporting, that the ſaid *W. H.* had taken the ſaid piece of ſhalloon of the ſaid *J. B.* and had dyed it black, and had given it to his taylor to be ſold for his the ſaid *W. H.*'s benefit, and had defrauded the owner (meaning the ſaid *J. B.*) thereof: *And alſo whereas* the ſaid *J. B.* had intruſted the ſaid *W. H.* with one other piece of ſhalloon to be dyed by the ſaid *W. H.* in his ſaid art of a dyer; the ſaid *S.* afterwards of his further malice, on the ſame day and year at *London* aforeſaid, in the pariſh and ward aforeſaid, having diſcourſe concerning the ſaid *W.*

Verba purportantia.

W. H. in the preſence and hearing of divers ſubjects of our ſaid lord the preſent king, ſaid of the ſaid *W. H.* that the ſaid *W. H.* had taken the ſaid piece of ſhalloon of the ſaid *J. B.*'s, and had it dyed black, and had given it to his taylor to be ſold for his the ſaid *W. H.*'s benefit, and had defrauded the owner (meaning the ſaid *J. B.*) thereof: By means of the ſpeaking and publiſhing of which ſaid ſeveral falſe, feigned, ſcandalous and defamatory words, the ſaid *W. H.* is very much hurt, ſcandalized and injured in his good name, fame, credit, reputation, and in his ſaid buſineſs; And the ſaid *W. H.* has thereby loſt divers ſums of money and great profit, and is very much hindered in tranſacting his lawful buſineſs; Therefore the ſaid *W.* ſays he is injured, and has damage to the value of two hundred pounds; and thereupon he brings ſuit, *&c.*

Pledges, *&c.*

Covenant.

Trinity *term in the ſixteenth year of the reign of king* George *the third.*

London, to wit. J. G. complains of *R. C.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, in a plea of breach of covenant, *For* that whereas by a certain charter-party of affreightment made at *London* aforeſaid; to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, on the ninth day of *Auguſt* in the year of our Lord one thouſand ſeven hundred and ſeventy-five, between the ſaid *J.* by the name of *J. G.* maſter of the good ſhip or ſloop called the *P.* burthen one hundred tons or thereabouts, then in the river of *Thames*, of the one part, and the ſaid *R.* by the name of Mr. *R. C.* of *London*, merchant, freighter of the ſaid ſhip, of the other part, (the counter-part of which ſaid charter-party of affreightment ſealed with the ſeal of the ſaid *R.* the ſaid *J.* brings here into court, the date whereof is the day and year aboveſaid) *It is witneſſed* that the ſaid maſter, for the conſiderations thereafter mentioned, had granted and let, and the freighter had accordingly hired and taken the ſaid ſhip to freight by the month, for a voyage with her to

Declaration in covenant on a charter-party of affreightment.

to be made from the port of *London* to the iſland of *New Providence* and back to *London*, at the monthly freight thereafter expreſſed, and on the terms and conditions following: Firſt, the ſaid maſter for himſelf, his executors and adminiſtrators, did covenant, promiſe and agree to and with the ſaid freighter, his executors, adminiſtrators and aſſigns, by the ſaid charter-party of affreightment, that the ſhip being tight, ſtaunch and ſtrong, and well manned, tackled and provided with proviſions and ſtores of all kinds fit and neceſſary for ſuch a ſhip, and the voyage thereafter mentioned, ſhould ſtay in the river of *Thames* as long as the ſaid freighter ſhould think proper, and load, receive and take on board her from the ſaid freighter, his factors or aſſigns, all ſuch goods and merchandize as he or they ſhould tender to be loaden, not exceeding what the ſaid ſhip could reaſonably ſtow and carry, over and above her tackle, apparel and furniture, and therewith directly, as wind and weather would permit, ſail and proceed to the ſaid iſland of *New Providence* aforeſaid, and there ſtay for ſuch time as the ſaid freighter, his factors or aſſigns ſhould think proper, and unload and deliver all ſuch goods and merchandizes as ſhould have been by him or them laden on board the ſaid ſhip in the river of *Thames*; and then and there load, receive and take on board her from the ſaid freighter, his factors or aſſigns, all ſuch goods and merchandize as he or they ſhould tender, not exceeding what

the

the ſaid ſhip could reaſonably ſtow and carry in manner as aforeſaid, and therewith directly, wind and weather permitting, ſail and return to the port of *London*, and there ſtay to unload and deliver to the ſaid freighter, his factors or aſſigns, all ſuch goods and merchandize as ſhould have been by him or them laden on board the ſaid ſhip at the iſland of *New Providence* aforeſaid, and ſo end her voyage, the perils and dangers of the ſeas and reſtraint of princes and rulers during the ſaid voyage always excepted. *And* further, the ſaid maſter did by the ſaid charter-party of affreightment covenant and promiſe to pay and diſcharge all ſeamens wages, victualling the ſaid ſhip, port charges, pilotage, and all other charges and expences whatſoever, that ſhould accrue during the ſaid voyage; And did alſo covenant that the ſaid ſhip's cargo, both out and home, ſhould be ſtowed to the beſt advantage; in conſideration whereof the ſaid freighter for himſelf, his executors and adminiſtrators, did covenant, promiſe and agree to and with the ſaid maſter, his executors, adminiſtrators and aſſigns, by the ſaid charter-party of affreightment, that he the ſaid freighter, his factors or aſſigns, ſhould and would load, unload, diſpatch and diſcharge the ſaid ſhip at the ſeveral places and in manner as above mentioned; and alſo ſhould and would well and truly pay or cauſe to be paid to the ſaid maſter, his executors, adminiſtrators or aſſigns, monthly freight for the hire of the ſaid ſhip, the full ſum of forty-five pounds of lawful money of *Great*

Britain, per calendar month, and ſo in proportion for a leſs time than a calendar month, for all ſuch time and ſo many months as the ſaid ſhip ſhould be in the ſervice and employ of the ſaid freighter or his aſſigns, until her diſcharge in the river of *Thames*; the ſaid monthly freight to commence the twenty-third day of the then inſtant *Auguſt*, to be paid the ſaid maſter, his executors, adminiſtrators or aſſigns, one half part thereof upon the diſcharge of the ſaid ſhip in the river of *Thames*, and the remainder in three months then next following. And further, the ſaid maſter did by the ſaid charter party of affreightment, covenant and agree, that if any loſs or damage ſhould happen to the ſaid ſhip by diſtreſs of weather, or otherwiſe, during the ſaid voyage, whereby ſhe ſhould be obliged to put into any port or place to refit, that the ſame ſhould be made good at the expence of him the ſaid maſter, his executors or adminiſtrators. And the ſaid freighter for himſelf did, by the ſaid charter-party of affreightment, covenant and agree, that he would not deduct any part of the monthly hire to become due to the ſaid ſhip for the time ſhe ſhould be detained in procuring ſuch repairs; and to the performance thereof the ſaid parties to the ſaid charter-party did bind themſelves, their executors and adminiſtrators, eſpecially the ſaid maſter, the ſaid ſhip, her freight and appurtenances; and, the ſaid freighter, the goods to be laden on board her, the either to the other in the penal ſum of five hundred pounds ſterling, firmly by the

ſaid

ſaid charter-party, as by the ſaid charter-party more fully appears. And the ſaid *J.* in fact ſaith, that although the ſaid *J.* hath well and faithfully performed and fulfilled all and ſingular the covenants, grants and agreements contained in the ſaid charter-party on the part of the ſaid *J.* to be performed and fulfilled; yet proteſting that the ſaid *R.* hath not performed or fulfilled any of the covenants, grants or agreements in the ſaid charter-party contained on the part of the ſaid *R.* to be performed and fulfilled; in fact the ſaid *J.* ſaith, that the ſaid ſhip being tight, ſtaunch and ſtrong, and well manned, tackled and provided with proviſions and ſtores of all kinds, of the twenty-third day of *Auguſt* in the year of our Lord one thouſand ſeven hundred and fifty-three, entered into the ſervice and employ of the ſaid *R.* and did ſtay in the river of *Thames* as long as the ſaid *R.* did think proper, and load, receive and take on board her from the ſaid *R.* his factors or aſſigns, all ſuch goods and merchandize as he or they did tender, to be laden, and therewith directly, as wind and weather did permit, departed from the ſaid river of *Thames* in the port of *London* outwards on her ſaid voyage, and ſailed to the ſaid iſland of *New Providence*; And that the ſaid ſhip afterwards, to wit, on the 13th day of *May* in the year of our Lord one thouſand ſeven hundred and ſeventy-ſix, arrived back in the ſaid river of *Thames* in the ſaid port of *London*, and performed and finiſhed her ſaid voyage, and was from her

ſaid voyage diſcharged, to wit, on the 22d day of *May* in the year laſt mentioned, at *London* aforeſaid, in the pariſh and ward aforeſaid. And the ſaid *J.* further ſaith, that the ſaid ſhip was in the ſervice and employ of the ſaid *R.* before her ſaid diſcharge in the ſaid river of *Thames*, for the ſpace of nine months, to wit, from the ſaid twenty-third day of *Auguſt* in the ſaid year of our Lord one thouſand ſeven hundred and ſeventy-five, until the twenty-ſecond day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and ſeventy-five; and that the monthly freight for the hire of the ſaid ſhip for the ſaid nine months amounted to the ſum of four hundred and five pounds of lawful money of *Great Britain*, at the rate of forty-five pounds of like lawful money *per* calendar month. And the ſaid *J.* further ſaith, that the ſaid *R.* did not pay to the ſaid *J.* one half part of the ſaid ſum of four hundred and five pounds, to wit, the ſum of two hundred and two pounds ten ſhillings, upon the diſcharge of the ſaid ſhip in the river of *Thames* aforeſaid, according to the form and effect of the charter-party; but the ſaid ſum of two hundred and two pounds ten ſhillings, and every part thereof is ſtill due and unpaid to the ſaid *J.* contrary to the form and effect of the ſaid charter-party; and ſo the ſaid *R.* (although often requeſted) has not kept his ſaid covenant ſo made as aforeſaid, with the ſaid *J.* but has broke the ſame, and has hitherto wholly refuſed and ſtill doth refuſe to keep the ſame with the ſaid *J.* whereupon

the

the ſaid *J.* ſaith he is injured, and hath ſuſtained damage to the value of two hundred and fifty pounds: And thereupon he bringeth ſuit, *&c.*

E. D. for the plaintiff.
J. J. for the defendant.

Pledges for the proſecution are — — { *John Doe* and *Richard Roe.*

Mich. 16 *Geo.* 3.

London, *to wit.* *T. B.* complains of *R. L.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, in a plea of breach of covenants, *For* that whereas by a certain indenture made at *London* aforeſaid, in the pariſh of, *&c.* in the ward of, *&c.* on the ſecond day of *November*, which was in the year of our Lord 1776, between the ſaid *T.* by the name of *T. B.* of, *&c.* of the one part, and the ſaid *R.* by the name of *R. L.* of, *&c.* of the other part, *The* counter part of which ſaid indenture, ſealed with the ſeal of the ſaid *R.* the ſaid *T.* brings here into court, the date whereof is the day and year aboveſaid, the ſaid *T. did* demiſe, leaſe, and to farm let unto the ſaid *R. All* that his new-built large brick meſſuage or tenement and dwelling-houſe, with the garden ground belonging to it,

Declaration in covenant. B. R.

Indenture of leaſe.

Proſert.

Demiſe.

Premiſſes.

it, and alſo all that his large double warehouſe fronting the ſaid houſe, and alſo a ſummer-houſe next the water-ſide; all which ſaid premiſſes are ſituate, ſtanding, lying and being in a certain place, commonly called or known by the name of the *Stowage* in the pariſh of *St. Nicholas, Deptford* aforeſaid in the ſaid county of *Kent*, as the ſame were then late in the tenure, poſſeſſion or occupation of him the ſaid *T. B.* his undertenants or aſſigns, but then in the tenure or occupation of him the ſaid *R. L.* together with the uſe of the pump ſtanding on the other part of the ſaid *T. B.*'s premiſſes, in common with the reſt of the tenants of him the ſaid *T. B.* and alſo with the uſe of the wharf and crane for his the ſaid *R.*'s, his executors, adminiſtrators and aſſigns own uſe, in landing and ſhipping of goods in his and their own way of buſineſs, and not otherwiſe, together with all ways, paths, paſſages, waters, water-courſes, lights, eaſements, privileges, advantages, appurtenances and conveniences to the ſaid dwelling-houſe, garden ground, double warehouſe, ſummer-houſe and premiſſes belonging or in any wiſe appertaining; *To* have and to hold the ſaid new brick meſſuage or tenement, dwelling-houſe, garden ground, double warehouſe, ſummer-houſe, and all and ſingular other the premiſſes thereby demiſed, or meant, mentioned or intended to be thereby demiſed and letten, with their and every of their appurtenances, and every part and parcel thereof, unto the ſaid *R.* his executors, adminiſtrators and aſſigns, from the feaſt day of *St. Michael*

Habendum.

Michael the archangel then laſt paſt, before the day of the date of the ſaid indenture, for and during, and until the full end and term of twenty-one years from thence next enſuing, and fully to be compleat and ended; *Yielding* and paying therefore yearly and every year, during the ſaid term of twenty-one years thereby demiſed and letten unto the ſaid *T.* his heirs or aſſigns, the yearly rent or ſum of 15*l.* of lawful money of *Great Britain*, at the four moſt uſual feaſt-days or times of payment of rent in the year, that is to ſay, upon the feaſts of the birth of our Lord Chriſt, the Annunciation of the bleſſed virgin *Mary*, the Nativity of *St. John* the baptiſt, and *St. Michael* the archangel, by even and equal portions; the firſt payment thereof to be made on the feaſt-day of the birth of our Lord Chriſt next enſuing after the day of the date of the ſaid indenture. *And* the ſaid *R.* did by the ſaid indenture for himſelf, his executors, adminiſtrators and aſſigns, covenant, promiſe, grant and agree to and with the ſaid *T.* his heirs and aſſigns, and to and with every of them, in manner and form following, that is to ſay, That he the ſaid *R.* his executors, adminiſtrators or aſſigns, ſhould and would well and truly pay or cauſe to be paid unto the ſaid *T.* his heirs or aſſigns, or ſome or one of them, the ſaid yearly rent or ſum of 15*l.* thereby reſerved on the ſeveral days therein before limited for payment thereof during the ſaid term, without any fraud or covin; and alſo that he the ſaid *R.* his executors, adminiſtrators or aſſigns, ſhould and would at all times

Reddendum.

Covenants.

thereafter during the ſaid term thereby demiſed, when, where and as often as need ſhould be or occaſion require, at his or their own proper coſts and charges repair, uphold, ſupport, amend and keep the ſaid meſſuage or tenements, garden, double warehouſe, ſummer-houſe and premiſſes, in, by and with all and all manner of neceſſary reparations and amendments whatſoever, and the ſame meſſuage or tenement, garden, double warehouſe, ſummer-houſe and premiſſes, ſo well and ſufficiently repaired, upholden, ſupported, amended and kept, at the end of the ſaid term, or other ſooner determination or expiration of that leaſe, which ſhould firſt happen and come, ſhould and would peaceably and quietly ſurrender and yield up unto the ſaid *T.* his heirs or aſſigns, together with the ſeveral things following, *viz.* in the kitchen, *&c. &c.* as by the ſaid indenture amongſt other things more fully appears; by virtue of which ſaid demiſe the ſaid *R.* entered into all and ſingular the ſaid demiſed premiſſes, with the appurtenances, and was and ſtill is thereof poſſeſſed. *And* although the ſaid *T.* always, ever ſince the making of the ſaid indenture, hitherto hath well and truly performed and fulfilled all things contained in the ſaid indenture on his part and behalf to be performed and fulfilled, according to the form and effect of the ſaid indenture; yet proteſting that the ſaid *R.* hath not performed or fulfilled any thing contained in the ſaid indenture on his part and behalf to be performed and fulfilled, in fact the ſaid *T.* ſays, that at the feaſt of *St. Michael*

Defendant entered.

Plaintiff performed all covenants on his part.

1. Breach. One year's rent in arrear.

Michael the archangel in the year of our Lord 1776, 15 *l.* of the rent aforeſaid, for one year ended on the ſaid laſt mentioned feaſt in the year laſt aforeſaid, at that feaſt were and ſtill are in arrear and unpaid from the ſaid *R.* to the ſaid *T.* againſt the form and effect of the ſaid indenture, and of the ſaid covenant of the ſaid *R.* made in that behalf as aforeſaid.

2. Breach. Dwelling-houſe, &c. uncovered, whereby the timber, &c. became rotten, &c.

And the ſaid *T.* further ſays, that at the ſaid feaſt of *St. Michael* the archangel in the year laſt aforeſaid, and for the ſpace of one whole year then laſt paſt, the ſaid dwelling-houſe, warehouſe and ſummer-houſe, that is to ſay, 10 perches of the ſaid dwelling-houſe, 10 perches of the ſaid warehouſe and 10 perches of the ſaid ſummer-houſe were uncovered for want of covering, whereby the timbers, rafters and beams of the ſaid dwelling-houſe, warehouſe and ſummer-houſe were become rotten, ruinous and in great decay and ſpoiled, and the under pinnings, doors, floors, wainſcots, cielings, windows, walls and partitions of the ſaid dwelling-houſe, warehouſe and ſummer-houſe, during all that time were in great decay and ruinous for want of repairing and amending the ſame; and all thoſe premiſſes being ſo out of repair he the ſaid *R.* ſuffered and permitted to be and continue out of repair for all that time, and ſtill ſuffers the ſame to continue out of repair, againſt the form and effect of the ſaid indenture, and of the covenant of the ſaid *R.* made in that behalf as aforeſaid.

3. Breach. Pulling down partitions.

And the ſaid *T.* further ſays, that the ſaid *R.* during the ſaid term, to wit, on the firſt day of *November*

November in the year of our Lord 1774 aforeſaid, pulled down, proſtrated and removed divers partitions, to wit, twenty-three ſquares of partition of and belonging to the ſaid dwelling-houſe, and which at the time of making the ſaid indenture were fixed and ſet up in the ſaid dwelling-houſe, and were part thereof, and has taken and carried away the ſame from the place wherein the ſame were ſo fixed and ſet up, and made part of the ſaid dwelling-houſe, and applied the ſame to his own uſe, againſt the form and effect of the ſaid indenture, and of his aforeſaid covenant made in that behalf as aforeſaid. *And* ſo the ſaid *T.* ſays, that the ſaid *R.* (although often requeſted) hath not kept his ſaid covenant ſo made with the ſaid *T.* but hath broke the ſame, and to keep the ſame with the ſaid *T.* he the ſaid *R.* hitherto hath, and ſtill doth wholly refuſe, whereby the ſaid *T.* ſays that he is injured, and hath ſuſtained damage to the value of 40*l.* and therefore he brings his ſuit, *&c.*

Conclusion.

Pledges, to proſecute, { *John Doe*, and *Richard Roe*.

Plea.

To the firſt breach.

And the ſaid *R. L.* by *R. R.* his attorney, comes and defends the force and injury, when, *&c.* *And* as to the ſaid breach of covenant above aſſigned in this, that at the feaſt of *St. Michael* the archangel 1776, 15*l.* of the rent aforeſaid for one year ended on that feaſt, were

were in arrear at that feaſt and unpaid, the ſaid *R.* ſays, that the ſaid *T.* ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſays, that the ſaid 15*l.* of the rent aforeſaid for the ſaid one year ended on the ſaid feaſt of *St. Michael* the archangel in the year of our Lord 1776, were not, nor any part thereof was in arrear and unpaid at that feaſt in that year, as by the ſaid declaration of the ſaid *T.* is above ſuppoſed; and of this the ſaid *R.* puts himſelf upon the country; and the ſaid *T.* likewiſe. *And* as to the ſaid breach of covenant above aſſigned in this, that the ſaid dwelling-houſe, warehouſe and ſummer-houſe were uncovered for want of covering, and the under-pinnings, doors, floors, wainſcots, cielings, windows, walls and partitions of the ſaid dwelling-houſe, warehouſe and ſummer-houſe were in great decay and ruinous for want of repairing and amending the ſame, the ſaid *R.* ſays, that the ſaid *T.* ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſays, that the ſaid dwelling-houſe, warehouſe and ſummer-houſe were not, nor any of them, nor any part thereof, was uncovered for want of covering, nor the under-pinnings, doors, floors, wainſcots, cielings, windows, walls and partitions of the ſaid dwelling-houſe, warehouſe or ſummer houſe, or either of them, were, or any of them, or any part thereof, was in decay or ruinous for want of repairing and amending the ſame, in manner and form as the ſaid *T.* hath in his ſaid declaration in that behalf above alledged; and

To the ſecond breach.

of

To the third breach.

of this he puts himſelf upon the country; and the ſaid *T.* likewiſe. *And* as to the ſaid breach of covenant above aſſigned in this, that the ſaid *R.* during the ſaid term did pull down, proſtrate and remove divers partitions of or belonging to the ſaid dwelling-houſe, and which at the time of making the ſaid indenture were fixed and ſet up in the ſaid dwelling-houſe, and were part thereof, and take and carry away the ſame from the place wherein the ſame were ſo fixed and ſet up, and made part of the ſaid dwelling-houſe, and apply the ſame to his own uſe, the ſaid *R.* ſays, that the ſaid *T.* ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſays, that he the ſaid *R.* did not pull down, proſtrate or remove the ſaid partitions, or any of them, or any part thereof, in manner and form as the ſaid *T.* in his ſaid declaration hath above alledged; and of this he alſo puts himſelf upon the country; and the ſaid *T.* likewiſe.

D. Poole.

Wedneſday *next after one month of* St. Michael *in the ſixteenth year of king* George *the third.*

Rule for leave to bring the rent into court.

B. and *L.* IT is ordered that upon bringing into court the ſum of 15*l.* being the whole rent demanded by the declaration, further proceedings as to the non-payment of rent be ſtayed; and it is further ordered,

dered, that it be referred to Mr. *B.* to ſee what is due to the plaintiff for rent, and to tax his coſts, and determine thereon between the parties if he can, otherwiſe to report the matter to the court, but the plaintiff is at liberty to proceed for any other breaches of covenant between him and the defendant, ſave the non-payment of rent. Upon the motion of Mr. *Holt*.

By the court.

Note; The plea as to the firſt breach is to be omitted, and the defendant is to plead to the other breaches only.

Trin. 13 *Geo.* 3.

Middleſex, to wit. BE *it remembered*, That on *Monday* next after the octave of the purification of the bleſſed virgin *Mary*, in the term of *St. Hilary* now laſt paſt, before our lord the king at *Weſtminſter*, came *T. R.* by *G. L.* who is admitted by the court of our ſaid lord the king here to proſecute for the ſaid *T.* who is within the age of one and twenty years, as the next friend of him the ſaid *T.* and brought in the court of our ſaid lord the king then there his bill againſt *J. F.* otherwiſe called *J. F.* of the pariſh of *St. George Bloomſbury*, in the county of *Middleſex*, engraver, being in the cuſtody of the marſhal, *&c.* of a plea of breach of covenant; and there are pledges of proſecuting, to wit, *John Doe*

Memorandum of a bill filed on a particular day in the next preceident term but one. B. R.

Declaration in covenant by an infant on indentures of apprenticeſhip, and for not inſtructing the apprentice, and turning him away, at the ſuit of an infant by his next friend.

Doe and *Richard Roe*; which ſaid bill follows in theſe words, to wit *Middleſex*, to wit, *T. R.* by *G. L.* who is admitted by the court of our ſovereign lord the king here to proſecute for the ſaid *T.* who is within the age of twenty-one years, as the next friend of him the ſaid *T.* complains of *J. F.* otherwiſe called *J. F.* of the pariſh of *St. George Bloomsbury*, in the county of *Middleſex*, engraver, being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea of breach of covenant: *For that whereas* by a certain indenture, made at *Weſtminſter* in the ſaid county of *Middleſex*, on the twenty-ſeventh day of *Auguſt* in the year of our Lord 1772, one part of which ſaid indenture, ſealed with the ſeal of the ſaid *J.* the ſaid *T.* brings here into court, bearing date the ſame day and year, the ſaid *T.* by the name of *T. R.* ſon of *S. R.* of the *Middle Temple*, gent. did put himſelf apprentice to the ſaid *J.* to learn his art, and with him (after the manner of an apprentice) to ſerve from the day of the date of the ſaid indenture unto the full end and term of ſeven years from thence next following, to be fully complete and ended, during which term the ſaid apprentice his ſaid maſter faithfully ſhould ſerve, his ſecrets keep, his lawful commands every where gladly do; he ſhould do no damage to his ſaid maſter, nor ſee it to be done of others, but to his power ſhould lett or forthwith give warning to his ſaid maſter of the ſame; he ſhould not waſte the goods of his ſaid maſter, nor lend them unlawfully to any; he ſhould not commit fornication nor

Indenture ſet forth.

Profert.

contract

contract matrimony within the ſaid term; he ſhould not play at cards, dice, tables, or any other unlawful games, whereby his ſaid maſter might have any loſs; with his own goods, or others, during the ſaid term, without licence of his ſaid maſter, he ſhould neither buy nor ſell; he ſhould not haunt taverns or playhouſes, nor abſent himſelf from his ſaid maſter's ſervice day or night unlawfully, but in all things as a faithful apprentice he ſhould behave himſelf towards his ſaid maſter, and all his, during the ſaid term. And the ſaid *J. F.* for and in conſideration of the ſum of 31*l.* 10*s.* of lawful money of *Great Britain*, to him in hand paid by the ſaid *S. R.* at or before the ſealing and delivery of the ſaid indenture, the receipt whereof was by the ſaid indenture acknowledged, his ſaid apprentice in the art of an engraver, which he then uſed, by the beſt means that he could, ſhould teach and inſtruct, or cauſe to be taught and inſtructed, finding unto the ſaid apprentice ſufficient meat, drink, lodging, and all other neceſſaries during the ſaid term. And for the true performance of all and every the ſaid covenants and agreements, either of the ſaid parties bound himſelf unto the other by the ſaid indenture, as by the ſaid indenture more fully appears. *In purſuance* of which indenture the ſaid *T.* entered into the ſervice of the ſaid *J.* and continued therein from the day of the date of the ſaid indenture until the twenty-ninth day of *January* in the year of our Lord 1774. *And* although the ſaid *T.* during that time well and truly performed and fulfilled

Plaintiff entered into defendant's ſervice.

Plaintiff performed every thing on his part.

fulfilled all and ſingular the ſaid covenants and agreements in the ſaid indenture contained, on his part and behalf to be done and performed, according to the form and effect of the ſaid indenture: *Nevertheleſs* the ſaid *J.* during the ſaid time that the ſaid *T.* ſo continued in the ſaid ſervice of the ſaid *J.* as aforeſaid, did not teach and inſtruct, or cauſe to be taught and inſtructed, the ſaid *T.* his apprentice in the ſaid art of an engraver, which he then uſed, by the beſt means that he could, according to the form and effect of his ſaid covenant, ſo made with the ſaid *T.* in that reſpect as aforeſaid, but neglected ſo to do. *And* the ſaid *J.* afterwards, during the ſaid term, to wit, on the ſaid twenty-ninth day of *January* in the year laſt above-mentioned, againſt the will of the ſaid *T.* put away and turned away the ſaid *T.* from the ſervice of the ſaid *J.* contrary to the form and effect of the ſaid covenant of the ſaid *J.* ſo made with the ſaid *T.* in that reſpect as aforeſaid. And ſo the ſaid *J.* (although often requeſted) has not kept his ſaid covenant ſo made with the ſaid *T.* in that reſpect as aforeſaid, but has broke it, and has hitherto wholly refuſed, and ſtill refuſes, to keep the ſame with the ſaid *T.* to the damage of the ſaid *T.* of 100*l.* And thereupon he brings ſuit, *&c.*

1. Breach. Did not inſtruct plaintiff in his trade.

2. Breach. Turned plaintiff out of his ſervice.

Imparlance. *And* now at this day, to wit, *Friday* next after the morrow of the Holy *Trinity* in this ſame term, to which day the ſaid *J. F.* had licence to imparle to the bill aforeſaid, and then to anſwer, *&c.* before our lord the king

at *Weſtminſter*, come as well the ſaid *T.* by the ſaid *G. L.* his next friend aforeſaid, as the ſaid *J.* by *T. J.* his attorney. *And* the ſaid *J.* defends the wrong and injury when, *&c.* And ſays, that the ſaid *T.* ought not to have or maintain his ſaid action againſt him, becauſe as to the ſaid breach of covenant in the ſaid declaration firſt above aſſigned, he the ſaid *J.* ſaith that after the making the ſaid indenture, and during the time that he the ſaid *T.* continued in the ſaid ſervice of the ſaid *J.* he the ſaid *J.* did teach and inſtruct the ſaid *T.* in the ſaid art of an engraver, which he the ſaid *J.* then uſed, by the beſt means that he could, according to the form and effect of his ſaid covenant, in this behalf made. And of this he puts himſelf upon the country. *And* the ſaid *T.* likewiſe, *&c.* *And* the ſaid *J.* as to the ſaid breach of covenant in the ſaid declaration laſt above aſſigned, ſays that he the ſaid *J.* after the making of the ſaid indenture, and during the ſaid term did not, againſt the will of the ſaid *T.* put away and turn out the ſaid *T.* from the ſaid ſervice of the ſaid *J.* And of this he puts himſelf upon the country. *And* the ſaid *T.* likewiſe, *&c.* *Therefore*, as well to try that iſſue, as the other iſſue aforeſaid above joined between the ſaid parties, let a jury come before our lord the king, at *Weſtminſter*, on *Wedneſday* next after three weeks of the Holy *Trinity*. And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, there, *&c.*

Plea that he inſtructed defendant.

Iſſue.

That he did not turn him away, &c.

Iſſue.

Venire facias to try both iſſues awarded.

Declaration in covenant againſt the aſſignee of a leſſee for years, for non-payment of rent. B. R.

Hertfordſhire, to wit, *T. H.* gent. complaineth of *B. S.* widow, aſſignee of *R. F.* deceaſed, in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, in a plea of breach of covenant; *For that whereas* the ſaid *T.* by a certain indenture made at *Berkamſtead St. Peter*'s in the county of *Hertford* aforeſaid, in the life-time of the ſaid *R.* to wit, on the 18th day of *Auguſt* in the year of our Lord 1776, between the ſaid *T.* by the name of *T. H.* of *Barkamſtead St. Peter*'s aforeſaid, in the county of *H.* aforeſaid, gent. of the one part, and the ſaid *R.* by the name of *R. F.* of the ſame place ſurgeon of the other part,

Recital of leaſe.

Profert.

The counterpart of which ſaid indenture, ſealed with the ſeal of the ſaid *R.* the ſaid *T.* bringeth here into court, bearing date the ſame day and year, for the conſideration

Demiſe.

therein mentioned, *did* demiſe, leaſe, and to farm let, unto the ſaid *R. F.* his executors, adminiſtrators and aſſigns, All that his

Premiſſes.

meſſuage, tenement or dwelling-houſe, ſituate, ſtanding and being in the high-ſtreet of *Berkamſtead St. Peter*'s aforeſaid, then in the poſſeſſion or occupation of the ſaid *T. H.* his aſſignee or aſſigns, and adjoining to or lying next to the meſſuage or tenement of the ſaid *T. H.* in poſſeſſion of Mrs. *A. A.* on the eaſt, and to the charity-ſchool the gift of *T. B.* eſq; on the weſt, and alſo the range of buildings behind the thereby intended to be demiſed meſſuage, lying next to or abutting on the ſaid ſchool, and the ſtable and granaries

granaries over the ſame, with the gate-way and hay-loft over it, with free liberty of ingreſs, egreſs and regreſs, to and for the ſaid *R. F.* his executors, adminiſtrators and aſſigns, ſervants, familiars and friends, at any time or times during the ſaid demiſe, to come, go, paſs or repaſs, in and by and through the gates next the ſtreet to the ſtable only with horſes, or otherwiſe as occaſion ſhould require, he or they locking the ſaid gates up on nights, together with all and every the yards, areas, walks, poundways, waters, and appurtenances whatſoever, to the ſame premiſſes then belonging, uſed, or in any ways appertaining, then in the occupation of the ſaid *T. H.* his aſſignee or aſſigns, and uſed with or reputed to belong to the ſame meſſuage or tenement (except and always reſerved out of the ſaid demiſe and leaſe full and free liberty of ingreſs, egreſs and regreſs, to and for the ſaid Mrs. *A. A.* her executors, adminiſtrators or aſſigns, ſervants, familiars and friends, or the tenant for the time being of the ſaid meſſuage wherein ſhe dwells, with waggons, carts, carriages, or otherwiſe to carry in wood through the gateway thereby demiſed, and to paſs and repaſs with dung to the dunghill, when and as often as ſhe or they ſhould have occaſion, without any hindrance or interruption by the ſaid *R. F.* his executors, adminiſtrators or aſſigns, by ſtopping or hindering the paſſage in the gateway, or otherwiſe; and alſo except to the ſaid *T. H.* his heirs or aſſigns, the great ſtable, with the lofts over the Exception.

ſame, and the granary over the ſaid Mrs. *A. A.*'s woodhouſe;) *To have and to hold* the ſaid meſſuage, tenement or dwelling-houſe, and all other the aforeſaid demiſed and leaſed premiſſes, and every part and parcel thereof, with their and every of their appurtenances, (except as before excepted) unto the ſaid *R. F.* his executors, adminiſtrators and aſſigns, from the feaſt-day of *St. Michael* the archangel next enſuing the date of the ſaid indenture, unto the full end and term of twelve years from thence next and immediately enſuing, and fully to be complete and ended: *Yielding and paying* therefore yearly and every year, for and during the ſaid term of twelve years, unto the ſaid *T. H.* his heirs and aſſigns, at or in the then dwelling-houſe of *E. W.* widow, in the pariſh of *N.* in the ſaid county of *H.* the yearly rent or ſum of 12*l.* of lawful money of *Great Britain*, at two uſual feaſts or days of payment in the year, that is to ſay, at the feaſt-day of the annunciation of the bleſſed virgin *Mary*, and *St. Michael* the archangel, by even and equal portions; the firſt payment thereof to begin and be made on the feaſt day of the annunciation of the bleſſed virgin *Mary* next enſuing the commencement of the ſaid indenture. *And* the ſaid *R. F.* for himſelf, his heirs, executors, adminiſtrators and aſſigns, and for every of them, in and by the ſaid indenture did covenant, promiſe and grant, to and with the ſaid *T. H.* his heirs and aſſigns, and to and with every of them, in manner and form following; that is to ſay, that

Habendum.

Reddendum.

Covenant to pay the rent.

that he the ſaid *R. F.* his executors, adminiſtrators and aſſigns, or ſome of them, ſhould and would well and truly pay, or cauſe to be paid unto the ſaid *T. H.* his heirs or aſſigns, the ſaid yearly rent or ſum of 12 *l.* of good and lawful money of *Great Britain*, therein before reſerved, at the times and place therein before mentioned or limited for the payment thereof, according to the true intent and meaning of the ſaid indenture, as by the ſaid indenture more fully appeareth. *By virtue* of which ſaid demiſe thereof, the ſaid *R.* entered into the ſaid demiſed premiſſes with the appurtenances, and was poſſeſſed thereof: *And being* ſo poſſeſſed thereof, afterwards, to wit, on the 1ſt day of *February* in the year of our Lord 1775, the ſaid demiſed premiſſes with the appurtenances, and all the eſtate, right, title, intereſt and term of years of the ſaid *R.* therein then to come and unexpired, came to the ſaid *B.* by aſſignment. *By virtue* of which aſſignment thereof the ſaid *B.* entered into the ſaid demiſed and aſſigned premiſſes, with the appurtenances, and was and ſtill is poſſeſſed thereof. *And being* ſo poſſeſſed thereof, ſhe the ſaid *B.* did not pay, or cauſe to be paid unto the ſaid *T.* 6 *l.* of the ſaid yearly rent of 12 *l.* which became due from the ſaid *B.* to the ſaid *T.* after the ſaid aſſignment, for half a year of the ſaid term, ending on the feaſt of *St. Michael* the archangel in the year of our Lord 1776, on that feaſt, according to the form and effect of the ſaid covenant of the ſaid *R.* ſo made with the

Leſſee enters.

Premiſſes aſſigned to defendant.

Defendant enters.

Breach.

ſaid *T.* in that reſpect as aforeſaid, or any part of the ſaid 6 *l.* at any time hitherto, but the ſaid 6 *l.* of the rent aforeſaid ſtill remain due and in arrear from the ſaid *B.* to the ſaid *T.* contrary to the form and effect of that covenant: *And ſo* the ſaid *T.* ſaith that the ſaid *B.* after the ſaid aſſignment ſo made to her as aforeſaid, (although often requeſted) hath not kept the ſaid covenant of the ſaid *R.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, but hath broke it, and hath hitherto wholly refuſed, and ſtill refuſeth to keep the ſame with the ſaid *T.* to the damage of the ſaid *T.* of 10 *l.* And thereof he bringeth ſuit, *&c.*

Pledges to proſecute { *John Doe,* and *Richard Roe.*

Plea, that nothing of the premiſſes ever came to the defendant by aſſignment.

And the ſaid *B.* by *G. W. G.* her attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *T.* ought not to have or maintain his ſaid action thereupon againſt her, becauſe ſhe ſaith that nothing of the ſaid demiſed premiſſes with the appurtenances ever came to the ſaid *B.* by aſſignment, as the aforeſaid *T.* by his declaration has above alledged; and this ſhe is ready to verify: Wherefore ſhe prayeth judgment, if the ſaid *T.* ought to have or maintain his ſaid action thereupon againſt her, *&c.*

Francis Buller.

And

And the ſaid *T.* ſaith, that he by any thing by the ſaid *B.* in her ſaid plea above alledged, ought not to be barred from having or maintaining his ſaid action againſt her, becauſe he ſaith that the ſaid demiſed premiſſes, with the appurtenances, did come to the ſaid *B.* by aſſignment, as he has before alledged; And of this he putteth himſelf upon the country: *And* the ſaid *B.* doth ſo likewiſe, *&c.* Therefore, *&c.*

Replication, that the premiſſes did come to defendant by aſſignment.

G. Wilſon.

Debt.

Hilary *term in the ſixteenth year of the reign of king* George *the third.*

Southampton, to wit. *H. R.* complains of *W. G.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king before the king himſelf, in a plea, that he render to the ſaid *H.* one thouſand pounds, which he owes to the ſaid *H.* and unjuſtly detains; *For that whereas,* on the day of in the year of the reign of his preſent majeſty, there iſſued out of his ſaid majeſty's court of *Chancery* at *Weſtminſter* in the county

Declaration in debt on the ſtatute againſt bribery at elections.

Recital of the writ of election.

county of *Middleſex*, a certain writ of his ſaid majeſty's under the great ſeal of *Great Britain*, directed to the then ſheriff of his majeſty's county of *Southampton*; by which ſaid writ his ſaid majeſty reciting, That whereas, by the advice and aſſent of his ſaid majeſty's counſel for certain arduous and urgent affairs touching his ſaid majeſty, the ſtate and defence of his kingdom of *Great Britain*, and the church, his ſaid majeſty had ordered a certain parliament to be holden at his ſaid majeſty's city of *Weſtminſter* the day of then next enſuing, there to treat and have conference with the prelates, great men and peers of his ſaid majeſty's realm, did command and ſtrictly injoin the ſaid ſheriff, that proclamation being made in his next county-court, after the reception of that his ſaid majeſty's writ to be holden at the time and place aforeſaid, two knights girt with ſwords, of the moſt fit and diſcreet of the ſaid county, and of every city of that county two citizens, and of every borough two burgeſſes of the moſt diſcreet and ſufficient, freely and indifferently by them, who at ſuch proclamation ſhould be preſent, the ſaid ſheriff ſhould cauſe to be elected, according to the form of the ſtatute in that caſe made and provided; and the names of ſuch knights, citizens and burgeſſes ſo elected, in certain indentures thereupon to be made between the ſaid ſheriff and them who ſhould be preſent at ſuch election to be inſerted (whether the perſon ſo elected ſhould be preſent or abſent) and them at the ſame day and place

place ſhould cauſe to come in ſuch manner, that the ſaid knights full and ſufficient power for themſelves and the commonalty of the ſame county, and the ſaid citizens and burgeſſes for themſelves and the commonalty of the ſaid cities and boroughs, ſeverally for them, might have to do and conſent to thoſe things, which then and there by the common council of his ſaid majeſty's kingdom aforeſaid (with God's aſſiſtance) ſhould happen to be ordained upon the affairs aforeſaid; ſo that through defect of ſuch power, or by an improvident election of ſuch knights, citizens and burgeſſes, the ſaid affairs might not in any wiſe remain unprovided for; willing nevertheleſs that neither the ſaid ſheriff, or any other ſheriff of that his ſaid majeſty's kingdom aforeſaid, in any wiſe ſhould be elected, and the ſaid election in full county of the ſame ſheriff ſo made diſtinctly and openly, under the ſeal of the ſame ſheriff, and the ſeals of them who ſhould be preſent at ſuch election, the ſame ſheriff ſhould certify to his ſaid majeſty in *Chancery* at the day and place aforeſaid, without delay, remitting to his majeſty one part of the aforeſaid indentures ſewed to the ſaid writ, together with the ſaid writ; by virtue of which writ *A. B.* eſq; then, and until, at and after the return of the ſaid writ being ſheriff of the ſaid county of *Southampton*, afterwards and before the return of the ſaid writ, to wit on the ſame day of in the year of our Lord at the borough of aforeſaid in the ſaid county of *Southampton*, made his

And of the ſheriff's precept thereon.

his certain precept in writing, ſealed with the ſeal of his ſaid office of ſheriff of the ſaid county of *Southampton*, and bearing date the ſame day and year laſt mentioned, directed to the mayor, aldermen and burgeſſes of the ſaid town or borough of aforeſaid within the ſaid county; by which ſaid precept the ſaid ſheriff reciting, That whereas by the advice and conſent of counſel of our ſaid ſovereign lord the king, for divers weighty and urgent affairs concerning our ſaid ſovereign lord the king, the eſtate and defence of the kingdom, and the church, our ſaid ſovereign lord the king had ordained, that a certain parliament ſhould be held at the city of *Weſtminſter* on *Thurſday* the day of then next enſuing, to have conference with the prelates, great men and peers of the realm; therefore the ſaid ſheriff, by virtue of the ſaid writ of our ſaid ſovereign lord the king to him directed, required the ſaid mayor, aldermen and burgeſſes, and every of them, That they ſhould elect or cauſe to be elected, by thoſe who ſhould be preſent, two burgeſſes, men of good underſtanding, wit, knowledge and diſcretion, freely and indifferently (proclamation being firſt made according to the form of the ſtatute in that caſe made and provided) to ſerve in the ſaid parliament for the ſaid town or borough; and that they ſhould cauſe to be inſerted the names of the perſons ſo elected, in certain indentures to be made between him the ſaid ſheriff and thoſe who ſhould make ſuch election, whether the perſons ſo elected be preſent or abſent; and ſo that

that the ſaid burgeſſes ſhould have full power and authority, for themſelves and the whole commonalty of the ſaid town or borough, to do and conſent to ſuch things, as with God's aſſiſtance in the ſaid parliament ſhould happen to be ordained upon the affairs aforeſaid; by virtue of which ſaid precept afterwards, and before the return of the ſaid writ, to wit, on the day of in the ſaid year of the reign of his ſaid majeſty, at the ſaid town or borough of in the county of *Southampton* aforeſaid, the election of two burgeſſes of the ſaid town or borough, to ſerve as burgeſſes of the ſaid town or borough at the then next parliament to be holden as aforeſaid, was had and made. And thereupon *E. F.* of aforeſaid, eſq; and *G. H.* of in the county of eſq; were elected, and at the ſaid return of the ſaid writ were returned to ſerve as burgeſſes for the ſaid town or borough in the ſaid parliament, to be holden as aforeſaid. The ſaid *W. G.* not regarding the ſtatute in that caſe lately made and provided, nor fearing the penalty contained therein, after the twenty-fourth day of *June* in the year of our Lord 1729, and after the iſſuing the ſaid writ, and before the ſaid election of burgeſſes in and for the ſaid town or borough of to wit, on the day of aforeſaid, in the ſaid year of the reign of his ſaid majeſty, at the ſaid town or borough of aforeſaid, did corrupt and procure *W. L.* who then and at the time of the ſaid election had a right to vote in the ſaid

ſaid election, to give his vote in the ſaid election for the ſaid *E. F.* and *G. H.* by his the ſaid *W. G.*'s then and there corruptly agreeing with and promiſing the ſaid *W. L.* as a reward for his the ſaid *W. L.*'s giving his vote as aforeſaid, to pay and give him the ſaid *W. L.* the ſum of five pounds five ſhillings of lawful money of *Great Britain*, contrary to the form of the ſtatute in that caſe lately made and provided; by reaſon and means of which ſaid corrupt agreement, and promiſe made as aforeſaid, the ſaid *W. L.* on the day of aforeſaid in the year laſt aforeſaid, at the ſaid town or borough of in the ſaid county of *Southampton*, gave his vote for the ſaid *E. F.* and *G. H.* at and in the ſaid election; whereby, and by virtue of the ſaid ſtatute, an action hath accrued to the ſaid *F. R.* to demand and have of the ſaid *W. G.* five hundred pounds, parcel of the ſaid one thouſand pounds. *And alſo* that the ſaid *W. G.* not regarding the ſaid ſtatute, nor fearing the penalty therein contained, after the ſaid twenty-fourth day of *June* in the ſaid year of our Lord 1729, and after the iſſuing the ſaid writ, and before the above-mentioned election of burgeſſes in and for the ſaid town or borough of to wit, on the ſaid day of in the year of the reign of his ſaid majeſty, at the ſaid town or borough of aforeſaid, did corrupt and procure another *W. L.* who then, and at the time of the aforeſaid election, had a right to vote in the

2d Count.

the ſaid election, to give his vote in the ſaid election for the ſaid *E. F.* and *G. H.* by his the ſaid *W. G.* then and there corruptly agreeing with and promiſing the laſt named *W. L.* as a reward for his ſo doing, to pay him the ſaid *W. L.* by way of loan, the ſum of five pounds five ſhillings of lawful money of *Great Britain*, contrary to the form and effect of the ſaid ſtatute; by reaſon and means of which ſaid corrupt agreement and promiſe laſt mentioned, the laſt named *W. L.* afterwards, to wit, on the ſaid day of in the laſt year aforeſaid, at the ſaid town or borough of gave his vote for the ſaid *E. F.* and *G. H.* at and in the ſaid election, by reaſon of which ſaid premiſſes laſt mentioned, and by virtue of the ſaid ſtatute, an action hath accrued to the ſaid *F. R.* to demand and have of the ſaid *W. G.* another ſum of five hundred pounds, reſidue of the ſaid one thouſand pounds: *Neverthelefs* the ſaid *W. G.* although often required, has not yet paid to the ſaid *F. R.* the ſaid one thouſand pounds, or any part thereof, but has hitherto refuſed and ſtill refuſes to pay the ſame to the ſaid *F. R.* to the damage of the ſaid *F. R.* of ten pounds: And thereupon he brings ſuit, *&c.*

—— for the plaintiff.
—— for the defendant.

Pledges of proſecuting { *John Doe*, and *Richard Roe.*

See *Rayner's Reading on ſtat.* 2 *Geo* 2. *c.* 24. being the act whereon the above is grounded. 4*to edit.* 1775, *p.* 138.

Eaſter

Eaſter 16 *Geo.* 3.

Declaration in debt on ſtat. 9 Ann. againſt a coachman for carrying letters.

Surry, *to wit.* *J. W.* who proſecutes as well for our lord the king as for himſelf in this behalf, complains of *D. S.* being in the cuſtody of the marſhal, *&c.* of a plea, that he render to our ſaid lord the king, and the ſaid *J. W.* who proſecutes as well, *&c.* fifty pounds of lawful money of *Great Britain*, which he owes our ſaid lord the king, and the ſaid *J. W.* who proſecutes as well, *&c.* and unjuſtly detains; for that whereas after the publiſhing of a certain act, made in the parliament held at *Weſtminſter* in the ninth year of the reign of her late majeſty queen *Anne*, intitled (An act for eſtabliſhing a general poſt-office for all her majeſty's dominions, and for ſettling a weekly ſum out of the revenues thereof for the ſervice of the war, and other her neceſſary occaſions) to wit, on the firſt day of *March* in the ſixteenth year of the reign of our ſaid lord the preſent king, at the borough of *Southwark* in the county aforeſaid, he the ſaid *D. S.* did then and there unlawfully, and without any ſufficient authority, for hire and reward, receive ten letters to be carried from the place where they were received, to wit, from the borough of *Southwark* aforeſaid, to another place within this kingdom of *England* to the ſaid *J. W.* unknown, and there to be delivered to divers perſons unknown; the ſaid *D. S.* on the ſaid firſt

firſt day of *March* in the year aforeſaid, not being our ſaid lord the king's poſt-maſter general appointed by our ſaid lord the king by any letters patent under the great ſeal of *Great Britain*, nor the deputy or aſſignee of the right honourable *T.* lord *L.* and the honourable Sir *J. E.* bart. which ſaid *T.* lord *L.* and Sir *J. E.* bart. on the ſaid firſt day of *March* in the year aforeſaid, and conſtantly from that time hitherto, by virtue of our ſaid lord the king's letters patent under the great ſeal of *Great Britain* to them granted by virtue of the ſaid ſtatute, were and now are our ſaid lord the king's poſt-maſter general, againſt the form of the ſaid ſtatute in that caſe made and provided, whereby the ſaid *D. S.* hath forfeited to our ſaid lord the king, and to the ſaid *J. W.* who proſecutes as well, *&c.* the ſum of fifty pounds of lawful money, to wit, the ſum of five pounds for each letter of the aforeſaid ten letters, ſo as aforeſaid by the ſaid *D. S.* unlawfully and without any ſufficient authority received, whereby an action hath accrued to his ſaid majeſty and the ſaid *J. W.* who proſecutes as well, *&c.* to require and have of the aforeſaid *D. S.* the ſaid fifty pounds. *Neverthelefs* the ſaid *D. S.* although often required, *&c.* hath not yet paid the ſaid fifty pounds to our ſaid lord the king, and the ſaid *J. W.* who proſecutes as well, *&c.* But he hath hitherto altogether refuſed, and ſtill doth refuſe to pay the ſame, to the damage of the ſaid *J. W.* who proſecutes as well, *&c.* of ten pounds; and therefore he brings

brings ſuit as well on the behalf of his ſaid majeſty as for himſelf on this behalf.

——— for the plaintiff.
——— for the defendant.

Pledges to proſecute are { *John Doe*, and *Richard Roe*.

Declaration in debt on the Stat. 3 & 4 Annæ, c. 4. ſ. 4. for trading as a hawker, under colour of a borrowed and hired licence.

London, *to wit.* *A. B.* who as well for our lord the king as for himſelf in this behalf proſecuteth, came before the barons of his exchequer on the day of in this term, by *Thomas Owen* his attorney, and complaineth by bill againſt *C. D.* preſent here in court on the ſame day, of a plea, that he render to our ſaid lord the king, and to the ſaid *A. B.* who as well, *&c.* 40 *l.* of lawful money of *Great Britain*, which to our ſaid lord the king, and to the ſaid *A. B.* who as well, *&c.* he oweth and unjuſtly detaineth, for that, to wit, that whereas one *John Doe* being a hawker, in due manner licenſed by the commiſſioners *of our ſaid lord the king*, for licenſing hawkers, pedlars, and petty chapmen, authoriſed and appointed according to the form of the ſtatute in ſuch caſe lately made, to wit, at *London* aforeſaid, that is to ſay, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, after the firſt day of *May* in the year of our Lord 1705, to wit, on the 18th day of *March* in the 16th year of the reign of our lord the preſent king at *London* aforeſaid,

Q. If thus ſtiled.

aforeſaid, in the pariſh and ward aforeſaid, (he the ſaid *John Doe* then and afterwards there uſing and exerciſing the art and buſineſs of a hawker) lent and let out to hire *his licence* by the ſaid commiſſioners to him before that time granted, to the ſaid *C. D.* *And* that he the ſaid *C. D.* afterwards, to wit, on the ſame day and year, under colour of the ſame licence to him ſo as aforeſaid lent and let out to hire, traded, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid, contrary to the form of the ſtatute in ſuch caſe lately made and provided, whereby, and by force of that ſtatute, the ſaid *C. D.* forfeited 40 *l.* whereby an action accrued to our ſaid lord the king, and to the ſaid *A. B.* who as well, *&c.* to demand and have from the ſaid *C. D.* the ſame 40 *l.* *Nevertheleſs* the ſaid *C. D.* (although often required, *&c.*) the ſame 40 *l.* or any part thereof, to our ſaid lord the preſent king, and to the ſaid *A. B.* who as well, *&c.* hath not yet paid, but he hath hitherto altogether refuſed, and ſtill doth refuſe to pay them the ſame: Wherefore the ſaid *A. B.* who as well, *&c.* ſaith, that he is injured, and hath damage to the value of 10 *l.* *And* therefore as well for our ſaid lord the king as for himſelf bringeth ſuit, *&c.*

Q. What kind of licence?

London, *to wit.* *A. B.* who as well for our lord the king as for himſelf in this behalf proſecuteth, came before the barons of his exchequer on the day of in this term, by *Thomas Owen* his attorney, and

Declaration in debt on ſtat. 3 & 4 An. c. 4. ſ. 4. for that defendant, being a li-

cenſed hawker, lent out his licence to hire. Scaccario.

and complaineth by bill againſt *C. D.* preſent here in court on the ſame day, of a plea, that he render to our ſaid lord the king, and to the ſaid *A. B.* who as well, *&c.* 40 *l.* of lawful money of *Great Britain*, which to our ſaid lord the king, and to the ſaid *A. B.* who as well, *&c.* he oweth and unjuſtly detaineth, for that, to wit, that whereas the ſaid *C. D.* being a hawker, in due manner licenſed by the commiſſioners *of our ſaid lord the king* for licenſing hawkers, pedlars, and petty chapmen, authoriſed and appointed according to the form of the ſtatute in ſuch caſe lately made and provided, to wit, at *London* aforeſaid, that is to ſay, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, after the firſt day of *May* in the year of our Lord 1705, to wit, on the 18th day of *March* in the 10th year of the reign of our lord the preſent king at *London* aforeſaid, in the pariſh and ward aforeſaid, (he the ſaid *C. D.* then and afterwards there uſing and exerciſing the art and buſineſs of a hawker,) lent and let out to hire *his licence* by the ſaid commiſſioners before that time granted to him, to one *John Doe*, to trade under colour thereof, contrary to the form of the ſtatute in ſuch caſe lately made and provided; whereby, and by force of that ſtatute, the ſaid *C. D.* forfeited 40 *l.* whereby an action accrued to our ſaid lord the king, and to the ſaid *A. B.* who as well, *&c.* to demand and have of the ſaid *C. D.* the ſame 40 *l.* *Neverthleſs* the ſaid *C. D.* (although often requeſted, *&c.*) hath not yet paid the ſame 40*l.*

Q. If the commiſſioners are ſo ſtiled.

Q. What kind of licence this was, if to travel with any, and what horſes, &c.

or

or any part thereof, to our ſaid lord the preſent king, and to the ſaid *A. B.* who as well, *&c.* but hath hitherto altogether refuſed, and doth ſtill refuſe to pay them the ſame: Wherefore the ſaid *A. B.* who as well, *&c.* ſaith, that he is the worſe, and hath damage to the value of 10*l.* and therefore as well for our ſaid lord the king as for himſelf bringeth ſuit, *&c.*

Eaſter *term in the ſixteenth year of the reign of his preſent majeſty* George *the third, king of* Great Britain, *and ſo forth.*

Middleſex, to wit. BE *it remembered*, that heretofore, that is to ſay, of the term of *St. Hilary* laſt paſt, before the lord the king at *Weſtminſter*, came Sir *J. A.* bart. by *A. S.* his attorney, and brought here into the court of the ſaid lord the king then there his certain bill againſt *C. K.* eſq; in cuſtody of the marſhal, and ſo forth; upon a plea of debt, and ſo forth; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe*, which ſaid bill follows in theſe words: *Middleſex*, to wit, Sir *J. A.* bart. complains of *C. K.* eſq; being in cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lord the king, before the king himſelf, of a plea that he render to the ſaid Sir *J.* 22209*l.* lawful money of *Great Britain*, which the ſaid *C.* owes to the ſaid Sir *J.* and unjuſtly detains from him; for this, to wit, That whereas the ſaid Sir *J.* heretofore, that is to ſay, in

Memorandum of a precedent term.

Declaration in debt on a judgment in the Common Pleas.

the term of *St. Hilary* in the twelfth year of the reign of his late majeſty king *George* the ſecond, in his ſaid late majeſty's court, before Sir *J. W.* knt. and his companions, then his ſaid late majeſty's juſtices of the bench, at *Weſtminſter* in the ſaid county of *Middleſex*, by conſideration of the ſame court, recovered againſt the ſaid *C.* by the name of *C. K.* late of the town of *Salop* in the county of *Salop*, eſq; 22209 *l.* which in the ſame court were adjudged to the ſaid Sir *J.* for his damages which he had ſuſtained, as well by occaſion of the ſaid *C*'s breaking certain covenants made between the ſaid Sir *J.* and the ſaid *C.* as for the ſaid Sir *J*'s coſts and charges by him laid out about his ſuit in that behalf, whereof the ſaid *C.* is convicted, as by the ſaid record and proceedings thereof now remaining in the court of our preſent lord the king before his juſtices of the bench at *Weſtminſter* aforeſaid manifeſtly appears; which ſaid judgment ſtill remains in full force and effect, no ways reverſed or annulled; and the ſaid Sir *J.* hath not yet obtained his execution againſt the ſaid *C.* of his damages aforeſaid upon the ſaid judgment; whereby an action accrued to the ſaid Sir *J.* to demand and have of the ſaid *C.* the ſaid 22209 *l.* *Nevertheleſs* the ſaid *C.* though often requeſted, has not yet paid the ſaid 22209 *l.* to the ſaid Sir *J.* but hath hitherto refuſed to pay the ſame to him, and ſtill doth refuſe, to the damage of the ſaid Sir *J.* 10,000 *l.* and therefore he brings this ſuit, and ſo forth.

And now at this day, to wit, *Wedneſday* next after 15 days from *Eaſter* day in this ſame term, until which day the aforeſaid *C.* had leave of imparling to the aforeſaid bill, and then to anſwer, and ſo forth, before the king at *Weſtminſter*, comes as well the aforeſaid Sir *J.* by *A. S.* his attorney, as the aforeſaid *C.* by *H. R.* his attorney; and the aforeſaid *C.* defends the force and injury, when, and ſo forth, and ſaith, That the ſaid Sir *J.* ought not to have or maintain his ſaid action againſt him; becauſe he ſaith, That he the ſaid *C.* before the day of exhibiting of the ſaid bill of the ſaid Sir *J.* againſt him, to wit, on the 1ſt day of *July* in the firſt year of the reign of his preſent majeſty, at *Weſtminſter* aforeſaid, paid to the ſaid Sir *J.* the ſaid ſum of 22209 *l.* And this he is ready to verify; wherefore he prays judgment, if the ſaid Sir *J.* ought to have or maintain his ſaid action againſt him, *&c.*

Imparlance.

Payment pleaded.

And the ſaid Sir *J.* ſaith, that he by any thing by the ſaid *C.* above in pleading alledged, ought not to be barred from having or maintaining his ſaid action thereof againſt him, becauſe he the ſaid Sir *J.* ſaith, That the ſaid *C.* did not pay to him the ſaid Sir *J.* the ſaid ſum of 22209 *l.* as the ſaid *C.* in his ſaid plea hath above alledged; and this he prays may be inquired of by the country; and the ſaid *C.* doth the like, *&c.* *Therefore* let a jury come before the lord the king at *Weſtminſter*, on next after and who neither, and ſo forth, to take knowledge, and ſo forth; becauſe as well, and ſo forth. The ſame day is given to the ſame parties there, and ſo forth.

Replication.

Iſſue.

Venire awarded.

Hilary *term in the twelfth year of king* George *the third.*

Memorandum of a particular day in the preceding term.

Middleſex, to wit. BE *it remembered*, that heretofore, that is to ſay, on next after the morrow of *All Souls*, in *Michaelmas* term laſt paſt, before our lord the king at *Weſtminſter*, *S. J.* came by *J. T.* her attorney, and brought into the court of our lord the king then and there her bill againſt *M. R.* being in the cuſtody of the marſhal of the *Marſhalſea* of our ſaid lord the king, before the king himſelf, of a plea of debt*, and there are pledges for proſecuting, to wit, *John Doe* and *Richard Roe*, which ſaid bill follows in theſe words; to wit, *Middleſex*, to wit, *S. J.* complains of *M. R.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to the ſaid *S.* thirty-five pounds of lawful money of *Great Britain*, which the ſaid *M.* owes to the ſaid *S.* and unjuſtly detains from her; for that, to wit, That whereas the ſaid *S.* in this preſent *Michaelmas* term, in the court of our ſaid lord the king, before the king himſelf, now here, to wit, at *Weſtminſter*, by the

Debt on a judgment, (recovered againſt the defendant as an executrix) ſuggeſting a devaſtavit.

* Debt on an obligation againſt an executor in the *debet* and *detinet*, ſuggeſting a *devaſtavit*. Ruled for the defendant; for the court will not allow the action to go further than it had been before, *viz.* than debt on a judgment. 1 *Lev.* 147. 2 *Sid.* 102.

con-

conſideration of the ſaid court recovered againſt the ſaid *M.* by the name of *M. R.* executrix of the laſt will and teſtament of *I. S.* deceaſed, otherwiſe lately called *I. S.* of the pariſh of *Chelſea* in the county of *Middleſex*, carpenter, as well a certain debt of thirty-five pounds, as ſeventeen pounds, which in the ſame court here were adjudged to the ſaid *S.* for her damage which ſhe had ſuſtained, as well by occaſion of the detaining that debt, as for her coſts and charges by her about her ſuit in that behalf expended, to be levied of the goods and chattels which were of the ſaid *I.* at the time of his death, if the ſaid *M.* had ſo much in her hands to be adminiſtered, whereof the ſaid *M.* was convicted, as by the record and proceedings thereof in the ſaid court here remaining manifeſtly appears; and the ſaid *S.* in fact ſays, that the ſaid *M.* afterwards ſatisfied her the ſaid *S.* of the ſaid ſeventeen pounds for the damages aforeſaid; which ſaid judgment ſtill remains in full force and effect as to the ſaid debt, no ways reverſed, annulled or ſatisfied; and the ſaid *S.* hath not yet obtained her execution againſt the ſaid *M.* of the debt aforeſaid upon the ſaid judgment. *And* the ſaid *S.* further in fact ſays, that after the ſaid judgment was given in form aforeſaid, to wit, on the day of *November* in the twelfth year of the reign of our ſovereign lord the now king at *Weſtminſter* aforeſaid in the county aforeſaid, divers goods and chattels which were of the ſaid *I.* at the time of his death, to the value of the ſaid debt of thirty-

Devaſtavit ſuggeſted.

five pounds, came to the hands of the ſaid *M.* to be adminiſtered; which ſaid goods and chattels the ſaid *M.* afterwards, to wit, on the ſame day and year at *Weſtminſter* aforeſaid, ſold, eloined, waſted, converted and diſpoſed of to her proper uſe; by which an action accrued to the ſaid *S.* to demand and have of the ſaid *M.* the ſaid thirty-five pounds: *Neverthelefs* the ſaid *M.* although often required, *&c.* has not yet paid the ſaid thirty-five pounds to the ſaid *S.* but has entirely refuſed, and ſtill does refuſe, to pay her the ſame; whereupon ſhe ſays ſhe is damnified, and has damage to the value of ten pounds; and thereupon ſhe brings ſuit, *&c.*

Imparlance.

And now at this day, to wit, *Tueſday* next after eight days of *St. Hilary* in this ſame term, to which day the ſaid *M.* had leave to imparle to the ſaid bill, and then to anſwer, *&c.* before our lord the king at *Weſtminſter*, comes as well the ſaid *S. J.* by her attorney aforeſaid, as the ſaid *M.* by *G. T.* her attorney; and the ſaid *M.* defends the force and injury, when, *&c.* and ſays, that the ſaid *S.* ought not to have or maintain her ſaid action againſt her the ſaid *M.* becauſe ſhe ſays, that there is no ſuch record of the recovery aforeſaid in the ſaid court of our ſaid lord the king now here remaining, as the ſaid *S.* by her declaration has above ſuppoſed; and this ſhe is ready to verify; whereupon ſhe prays judgment, if the ſaid *S.* ought to have or maintain her ſaid action againſt her the ſaid *M. &c.*

Plea nul tiel record. Vide 1 R. Raym. 550. Carth. 517, 453.

And

And the ſaid *S.* ſays, that ſhe, by any thing before alledged by the ſaid *M.* in pleading, ought not to be barred from having her aforeſaid action againſt the ſaid *M.* becauſe ſhe ſays, that there is ſuch record of the recovery aforeſaid remaining in the ſaid court of our ſaid lord the king now here, before the king himſelf, to wit, at *Weſtminſter* aforeſaid, as ſhe the ſaid *S.* has by her ſaid declaration above ſuppoſed; and this ſhe is ready to verify by that record, as appears in *Trinity* term in the eleventh and twelfth years of the reign of our ſaid lord the now king, in the roll; and ſhe prays that the ſaid term and roll may by the ſaid court of our ſaid lord the king now here be viewed and inſpected; and becauſe it is neceſſary that the ſaid record be viewed and inſpected before that judgment in this behalf be given, a day for that purpoſe is given by the court here before our lord the king at *Weſtminſter*, until *Wedneſday* next after fifteen days from the day of *Eaſter*; and the ſame day is alſo given to the parties aforeſaid at the ſame place.

Replication, habetur tale recordum.

Iſſue.

Pleas

B. R. A niſi prius record.

Pleas before our lord the king at Weſtminſter, *of the term of the Holy* Trinity *in the year of the reign of our ſovereign lord now king of &c.*

Memorandum of a declaration of a precedent term.

Lill. Ent. 185.

Middleſex, *to wit.* BE *it remembered*, that heretofore, to wit, in *Eaſter* term laſt paſt, before our lord the king at *Weſtminſter*, came *S. D.* gent. by *J. L.* his attorney, and brought into the court of our ſaid lord the king then there his certain bill againſt *J. A.* eſq; otherwiſe called *J. A.* of the *Inner Temple*, *London*, eſq; being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea of debt; and there are pledges of proſecuting, namely, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words, to wit, *Middleſex*, to wit, *S. D.* gent. complains of *J. A.* eſq; otherwiſe called *J. A.* of the *Inner Temple*, *London*, eſq; being in the cuſtody of the marſhal, *&c.* of a plea, that he render to him one hundred and thirty pounds of lawful money of *Great Britain*, which he owes him and unjuſtly detains; for that, to wit, That whereas the ſaid *J.* on the ſeventeenth day of *April* in the year of our Lord one thouſand ſeven hundred and ſeventy-five, at *Weſtminſter* in the county aforeſaid, by his writing obligatory, ſealed with the ſeal of the ſaid *J. And* to the court of our ſaid lord the now king here ſhewn, the date whereof is on the ſame day and year, ac-

B. R. Debt on a bond.

Profert.

acknowledged himſelf to be held and firmly bound to the ſaid *S.* in the ſaid one hundred and thirty pounds, to be paid to the ſaid *S.* when he ſhould be thereto afterwards required: *Yet* the ſaid *J.* although often required, *&c.* has not yet paid the ſaid one hundred and thirty pounds to the ſaid *S.* but has hitherto intirely refuſed, and ſtill does refuſe to pay him the ſame, to the damage of the ſaid *S.* of twenty pounds; and thereupon he brings ſuit, *&c.* Breach.

And now at this day, that is to ſay, on *Friday* next after the morrow of the Holy *Trinity* in this ſame term, to which day the ſaid *J.* had leave to imparle to the ſaid bill, and then to anſwer thereunto, before our lord the king at *Weſtminſter*, come as well the ſaid *S.* by his attorney aforeſaid, as the ſaid *J.* by *J. M.* his attorney. Imparlance.

And the ſaid *J.* defends the wrong and injury, when, *&c.* and ſays, that he ought not to be charged with the ſaid debt by virtue of the ſaid writing; becauſe he ſays, that that writing is not his deed; and of this he puts himſelf upon the country; *And* the ſaid *S.* does ſo likewiſe, *&c.* *Therefore* let a jury come thereupon before our lord the king at *Weſtminſter*, on *Wednesday* next after eight days of the Holy *Trinity*; and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid at the ſame place, *&c.* Plea non eſt factum. Iſſue. Venire awarded.

Pleas

Pleas before our lord the king at Weſtminſter, *of the term of the* Holy Trinity *in the year of the reign of our ſovereign lord* George *the third now king of &c.*

The jurat.

Middleſex, to wit. THE *jury* between *S. D.* gent. by his attorney, plaintiff, and *J. A.* eſq; otherwiſe called *J. A.* of the *Inner Temple, London*, eſq; defendant, of a plea of debt, are reſpited before our lord the king at *Weſtminſter*, until *Tueſday* next after three weeks of the Holy *Trinity*, unleſs the king's right truſty and well-beloved *W.* lord *M.* his majeſty's chief juſtice, aſſigned to hold pleas in the court of our lord the king before the king himſelf, ſhall firſt come on *Monday* next after the ſaid three weeks of the Holy *Trinity* at *Weſtminſter*, in the great hall of pleas there, by the form of the ſtatute, *&c.* for default of the jurors, *&c.* Therefore let the ſheriff have the bodies, *&c.* The ſame day is given to the parties aforeſaid at the ſame place.

B. R. Debt on a bond by the ſurviving obligee againſt the executor of the obligor. Lill. Ent. 165.

Middleſex, to wit. *J. C.* complains of *W. A.* one of the ſervants to *W. B.* eſq; being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, executor of the teſtament and laſt will of *W. A.* his late father, deceaſed, otherwiſe called *W. A.* of the town of *Buckingham*

ingham in the county of *Bucks*, draper, of a plea, that he render to him ſix hundred pounds of lawful money of *Great Britain*, which he unjuſtly detains; for that, to wit, That whereas the ſaid *W. A.* the teſtator in his life-time, to wit, on the twelfth day of *November* in the twenty-ſeventh year of the reign of our late ſovereign lord *George* the ſecond, late king of *Great Britain*, *&c.* at *Weſtminſter* in the county of *Middleſex* aforeſaid, by his writing obligatory, ſealed with the ſeal of the ſaid *W. A.* the teſtator, in his life-time, *And* to the court of our ſaid lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *J. C.* and to one *J. W.* gent. now deceaſed, in the ſaid ſix hundred pounds to be paid to the ſaid *J. C.* and *J. W.* when he ſhould be thereunto afterwards required: *Yet* the ſaid *W. A.* the teſtator in his life-time, and the ſaid *W. A.* the now defendant, after the death of the ſaid *W. A.* the teſtator, although often required, *&c.* have not, nor has either of them paid the ſaid ſix hundred pounds to the ſaid *J. C.* and *J. W.* or to either of them, in the life-time of the ſaid *J. W.* or to the ſaid *J. C.* after the death of the ſaid *J. W.* but have refuſed to pay them the ſame: And the ſaid *W. A.* the executor ſtill refuſes to pay the ſame to the ſaid *J. C.* to the damage of the ſaid *J. C.* of forty pounds: And thereupon he brings ſuit, *&c.*

Profert of the bond.

Breach.

London

B. R. Debt on a bond by the ſurviving executor of the obligee. Lill. Ent. 164.

London, *to wit.* *J.* *B.* gent. executor of the teſtament and laſt will of *B. D.* widow, deceaſed, complains of *A. R.* eſq; otherwiſe called *A. R.* of the pariſh of *St. Martin in the Fields* in the county of *Middleſex*, eſq; being in the cuſtody of the marſhal, *&c.* of a plea, that he render to him one thouſand and four hundred pounds of lawful money of *Great Britain*, which he juſtly detains, for this, to wit, That whereas the ſaid *A.* on the twenty-eighth day of *May* in the twelfth year of the reign of the ſovereign lord *George* the ſecond, late king of *Great Britain*, *&c.* at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, ſealed with the ſeal of the ſaid *A.* *And* to the court of our lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *D.* in her life-time in the ſaid one thouſand and four hundred pounds, to be paid to the ſaid *D.* when he ſhould be afterwards thereto required; *Yet* the ſaid *A.* although often required, *&c.* the ſaid one thouſand and four hundred pounds to the ſaid *D.* in her life-time, or to the ſaid *J.* after the deceaſe of the ſaid *D.* or to either of them, has not yet paid, but the ſaid *A.* has hitherto entirely refuſed to pay the ſaid one thouſand and four hundred pounds to the ſaid *D.* in her life-time, and to the ſaid *J.* ſince the deceaſe of the ſaid *D.* and ſtill refuſes to pay the ſame to the ſaid *J.* to the damage of the ſaid *J.* of twenty pounds;

Profert of the bond.

Breach.

pounds; And thereupon he brings ſuit, *&c.* *And* the ſaid *J.* brings here into court the letters teſtamentary of the ſaid *D.* by which it ſufficiently appears to the court here, that the ſaid *J.* is the executor of the ſaid teſtament of the ſaid *D.* and has the adminiſtration thereof, *&c.* Profert of the probate

London, *to wit.* *G. L.* gent. complains of Dame *M. S.* widow, executrix of the teſtament and laſt will of Sir *J. S.* knight and baronet, her late huſband deceaſed, otherwiſe called Sir *J. S.* of *Briel* in the county of *Suſſex*, knight and baronet, being in the cuſtody of the marſhal of the *Marſhalſea* of our lady the queen, before the queen herſelf, of a plea that ſhe render to him two hundred pounds of lawful money of *Great Britain* which ſhe unjuſtly detains, for that, to wit, That whereas the ſaid Sir *J.* in his life-time, to wit, on the twenty-ninth day of *October* in the year of our Lord one thouſand ſeven hundred and ſixty-nine, at *London*, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, ſealed with the ſeal of the ſaid Sir *J.* *And* to the court of our lord the now king here ſhewn, the date whereof is on the ſame day and year acknowledged himſelf to be held and firmly bound to the ſaid *G.* in the ſaid two hundred pounds, to be paid to the ſaid *G.* when he ſhould be thereunto required; *Yet* the ſaid Sir *J.* in his life-time, and the ſaid *M.* after the death of the ſaid Sir *J.* although often required, *&c.* have not, nor has either of them paid

B. R. Debt on a bond againſt the executrix of the obligor. Lill. Ent. 166.

Profert.

Breach.

paid the ſaid two hundred pounds to the ſaid *G.* but they have hitherto intirely refuſed to pay him the ſame; and the ſaid *M.* ſtill refuſes to pay him the ſame, and unjuſtly detains, to the damage of the ſaid *G.* of one hundred pounds: And thereupon he brings ſuit, *&c.*

Plea, non eſt factum teſtatoris. 10 Co. 120. b.

When, *&c.* and ſays, that ſhe ought not to be charged with the ſaid debt by virtue of the ſaid writing; becauſe ſhe ſays that the ſaid writing is not the deed of the ſaid Sir *J. S.* knight and baronet: And of this ſhe puts herſelf upon the country: *And* the ſaid *G.* does ſo likewiſe: *Therefore* let a jury thereupon come before our lady the queen at *Weſtminſter*, *&c.* on next after and who neither, *&c.* to recognize, *&c.* The ſame day is given to the parties aforeſaid at the ſame place, *&c.*

Iſſue. Venire facias awarded.

B. R. Debt on a bond againſt two executors of the obligor. Lill. Ent. 167, 482.

Middleſex, *to wit.* *M.* *P.* widow, complains of *J. K.* eſq; and *N. F.* gent. executors of the teſtament and laſt will of *R. K.* eſq; otherwiſe called *R. K.* of *Corſham* in the county of *Wilts*, eſq; in the cuſtody of the marſhal, *&c.* of a plea, that they render to her two thouſand pounds of lawful money of *Great Britain*, which they unjuſtly detain from her; for that, to wit, That whereas the ſaid *R.* in his life-time, to wit, on the twenty-fifth day of *March* in the year of our Lord one thouſand ſeven hundred and ſeventy, at *Weſtminſter* in the county of *Middleſex* aforeſaid, by his writing obligatory, ſealed with the ſeal of the ſaid *R.* in his life-time,

time, *And* to the court of our ſaid lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *M.* in the ſaid two thouſand pounds, to be paid to the ſaid *M.* when he ſhould be thereunto afterwards required: *Yet* the ſaid *R.* in his life-time, nor the ſaid *J.* and *N.* or either of them, ſince the deceaſe of the ſaid *R.* although often required, *&c.* have not yet paid, nor has either of them paid the ſaid two thouſand pounds to the ſaid *M.* but the ſaid *R.* in his life-time intirely refuſed to pay the ſame to the ſaid *M.* and the ſaid *J.* and *N.* ſince the deceaſe of the ſaid *R.* ſtill intirely refuſe to pay the ſame to the ſaid *M.* and unjuſtly detain, to the damage of the ſaid *M.* of twenty pounds: And thereupon ſhe brings ſuit, *&c.* Profert. Breach.

And for that the ſaid *M. P.* cannot deny but that the ſaid *J.* and *N.* have not, nor on the day of exhibiting the bill of the ſaid *M.* or at any time afterwards had, any goods or chattels which were of the ſaid *R.* at the time of his death in the hands of the ſaid *J.* and *N.* to be adminiſtered, ſufficient to ſatisfy to the ſaid *M.* the ſaid debt, the ſaid *M.* prays judgment, and her ſaid debt to be adjudged to her, to be levied of the goods and chattels which were of the ſaid *R.* at the time of his death, and which hereafter ſhall come to the hands of the ſaid *J.* and *N.* to be adminiſtered: Therefore it is conſidered, that the ſaid *M.* recover againſt the ſaid *J.* and *N.* her ſaid debt, to be levied of the goods and chattels Judgment of aſſets in futuro. 8 Rep. 134. 2 Saund. 216, 226. Lilly's Ent. 482, 505. Clift's Ent. 352, 428. Aſten's Ent. 281.

which were of the ſaid *R.* at the time of his death, and which hereafter ſhall come to the hands of the ſaid *J.* and *N.* to be adminiſtered; and the ſaid *J.* and *N.* in mercy, *&c.*

B. R. Debt on a bond by the adminiſtrator of the obligee. Lill. Ent. 164.

* *London, to wit.* *R.* *M.* eſq; adminiſtrator of the goods and chattels, rights and credits, which were of *A. B.* otherwiſe *N.* deceaſed, at the time of her death, *who died inteſtate*, complains of *A. R.* of the pariſh of *St. Martin in the Fields*, otherwiſe called, *&c.* being in the cuſtody of the marſhal, *&c.* of a plea, that he render to him one thouſand pounds of lawful money of *Great Britain*, which he unjuſtly detains; for that, to wit, That whereas the ſaid *A.* on the twenty-ſeventh day of *November* in the thirty-fourth year of the reign of our late ſovereign lord *George* the ſecond, late king of *England*, *&c.* at *London* aforeſaid, to wit, in the pariſh *St. Sepulchre* in the ward of *Farringdon Without*, by his writing obligatory, ſealed with the ſeal of the ſaid *A.* and to the court of our lord the now king here ſhewn, the date whereof is on the day and year aforeſaid, acknowledged himſelf to be held and

Profert of the bond.

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* Debt by the adminiſtrator of *A.* Plea in abatement that *A.* made his will, which after adminiſtration granted, was proved by the executor. Demurrer. Judgment for the plaintiff; for the plaintiff ought to have traverſed, *abſque hoc*, that the ſaid *A.* died inteſtate. *Paſ.* 7 *Ann. C. B. London* and *Beſſingham*, *Com. Rep.* 156. 6 *Co. Heliar. Yelv.* 115.

firmly

firmly bound to the ſaid *A.* by the name of *A. N.* of *London*, widow, in the ſaid one thouſand pounds, to be paid to the ſaid *A.* when he ſhould be afterwards thereto requeſted: *Yet* the ſaid *A.* although often required, *&c.* has not yet paid the ſaid one thouſand pounds to the ſaid *A.* in her life-time, or to the ſaid *R.* ſince the deceaſe of the ſaid *A.** (to which ſaid *R.* after the death of the ſaid *A.* to wit, on the thirty-firſt day of *January* in the year of our Lord one thouſand ſix hundred and ninety-five, adminiſtration of the goods and chattels, rights and credits, which were of the ſaid *A.* at the time of her death, was in due manner committed by *T.* by Divine Providence archbiſhop of *Canterbury*, primate of all *England*, and metropolitan, to whom the committing of that

Breach.

Adminiſtration committed.

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* The plaintiff ſets forth that letters of adminiſtration were committed by the official of the dean, who had a peculiar lawfully conſtituted, but does not ſhew how he was intitled, as it ought to be done in the caſe of a peculiar; nor does he ſay that the granting adminiſtration *adtunc pertinuit* to the dean; therefore the defendant demurs; *ſed non allocatur*, in as much as the plaintiff has ſet forth that adminiſtration was granted by the official of the dean, to whom of right granting of adminiſtration, *&c.* belonged, it is ſufficient. *Mich.* 8 *W.* 3. *Truelock* and—, *Com. Rep.* 17. Vide *Cro. Eliz.* 791. Declaration of *Mich.* 7 *W.* 3. ſetting forth letters of adminiſtration granted 11 *January*, 7 *W.* 3. *Curia*: If adminiſtration be granted, and the letters of adminiſtration are loſt, new letters of adminiſtration may be granted after the action commenced; but it is otherwiſe if they are then originally granted. *Mich.* 8 *W.* 3. *B. R. Barton* and *Fuller*, *Com. Rep.* 18.

adminiſtration of right belonged) or to either of them, but the ſaid *A.* refuſed to pay the ſaid one thouſand pounds to the ſaid *A.* in her life-time, and to the ſaid *R.* ſince the deceaſe of the ſaid *A.* and the ſaid *A.* ſtill refuſes to pay the ſame to the ſaid *R.* to the damage of the ſaid *R.* of one hundred pounds; and thereupon he brings ſuit, *&c.* *And* the ſaid *R.* brings here into court the letters of adminiſtration aforeſaid, which teſtify the committing the ſaid adminiſtration in form aforeſaid, *&c.*

Profert of the letters of adminiſtration.

B. R. Debt on ſeveral bonds by adminiſtratrix of the obligee.

Lill. Ent. 167.

Middleſex, *to wit.* *E.* *W.* widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of *C. W.* her late huſband, deceaſed, complains of *S. W.* gent. otherwiſe called *S. W.* of *Landreth* in the county of *Cornwall*, gent. otherwiſe called *S. W.* of *St. Dunſtans in the Weſt*, *London*, gent. being in the cuſtody of the marſhal, *&c.* of a plea, that he render to her ninety pounds of lawful money of *Great Britain*, which he unjuſtly detains; for that,

1. Bond.

to wit, That *whereas* the ſaid *S.* on the ſixteenth day of *December* in the year of our Lord one thouſand ſeven hundred and ſeventy, at *Weſtminſter* in the county aforeſaid, by his writing obligatory, ſealed with the ſeal of the

Profert.

ſaid *S.* and to the court of our lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *C. W.* in his life-time, in twenty-pounds parcel of the ſaid ninety pounds, to be paid to the ſaid

C.

C. when he ſhould be thereunto afterwards required: *And alſo whereas* the ſaid *S.* after- 2. Bond.
wards, to wit, on the twenty-ninth day of *September* in the year of our Lord one thouſand ſeven hundred and at *Weſtminſter* aforeſaid in the county aforeſaid, by his other writing obligatory, alſo ſealed with the ſeal of the ſaid *S.* and to the court of our ſaid lord Profert.
the now king here alſo ſhewn, the date whereof is on the ſame day and year laſt above mentioned, acknowledged himſelf to be held and firmly bound to the ſaid *C. W.* in his life-time in other twenty pounds, other parcel of the ſaid ninety pounds, to be alſo paid to the ſaid *C.* when he ſhould be thereunto afterwards required: *And alſo whereas* the ſaid *S.* after- 3. Bond.
wards, to wit, on the ſaid twenty-ninth day of *September* in the year of our Lord laſt aforeſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, by his other writing obligatory, alſo ſealed with the ſeal of the ſaid *S.* and to the court of our ſaid lord the now king here alſo ſhewn, Profert.
the date whereof is on the ſame day and year laſt above mentioned, acknowledged himſelf to be held and firmly bound to the ſaid *C. W.* in his life-time in other twenty pounds, other parcel of the ſaid ninety pounds, to be alſo paid to the ſaid *C.* when he ſhould be thereunto afterwards required: *And alſo whereas* 4. Bond.
the ſaid *S.* afterwards, to wit, on the ſame day and year laſt aboveſaid, at *Weſtminſter* aforeſaid in the county aforeſaid, by his other writing obligatory, alſo ſealed with the ſeal of the ſaid *S.* and to the court of our ſaid lord Profert.
the now king here alſo ſhewn, the date where-

of is on the ſame day and year laſt aboveſaid, acknowledged himſelf to be held and firmly bound to the ſaid *C.* in his life-time in other twenty pounds, other parcel of the ſaid ninety pounds, to be alſo paid to the ſaid *C.* when he ſhould be thereunto afterwards required: *And alſo whereas* the ſaid *S.* on the ſame day, year and place laſt aboveſaid, by his other writing obligatory, alſo ſealed with the ſeal of the ſaid *S.* and to the court of our ſaid lord the now king here alſo ſhewn, the date whereof is on the ſame day and year laſt aboveſaid, acknowledged himſelf to be held and firmly bound to the ſaid *C.* in his life-time in ten pounds, reſidue of the ſaid ninety pounds, to be alſo paid to the ſaid *C.* when he ſhould be thereunto afterwards required: *Yet* the ſaid *S.* although often required, *&c.* has not paid the ſaid ninety pounds to the ſaid *C.* in his life-time, nor to the ſaid *E.* ſince the deceaſe of the ſaid *C.* (to which ſaid *E.* on the day of in the year of our Lord at *Weſtminſter* aforeſaid in the county aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid *C.* at the time of his death, was in due form of law committed by to whom the committing the ſaid adminiſtration of right belonged) but the ſaid *S.* intirely refuſed to pay the ſame to the ſaid *C.* in his life-time, or to the ſaid *E.* ſince the deceaſe of the ſaid *C.* and ſtill refuſes to pay the ſame to the ſaid *E.* and unjuſtly detains, to the damage of the ſaid *E.* of forty pounds; and thereupon

5. Bond.

Profert.

Breach.

Adminiſtration committed to the plaintiff.

thereupon ſhe brings ſuit, &c. *And* ſhe brings here into court the letters of adminiſtration aforeſaid, which teſtify the committing the ſaid adminiſtration in form aforeſaid, the date whereof is on the day and year aforeſaid, &c. Profert of the letters of adminiſtration.

Of Eaſter *term in the ninth year of the reign of king* George *the third.*

London, *to wit.* BE *it remembered*, that heretofore (that is to ſay) of the term of *St. Hilary* laſt paſt, came before our lord the king at *Weſtminſter W. L.* and *E.* his wife, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of *J. K.* her late huſband deceaſed, by *G. W.* their attorney, and brought here into the court of our ſaid lord the king then there their certain bill againſt *N. G.* otherwiſe called *N. G.* of the iſland of *St. Chriſtopher*, merchant, being in the cuſtody of the marſhal of the *Marſhalſea* of our ſaid lord the king, before the king himſelf, in a plea of debt; and there are pledges to proſecute, to wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words: *London*, to wit, *W. L.* and *E.* his wife, adminiſtratrix of all and ſingular the goods and chattels, rights and credits which were of *J. K.* her late huſband deceaſed, complains of *N. G.* otherwiſe called *N. G.* of the iſland of *St. Chriſtopher*, merchant, in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, Memorandum of a precedent term. Debt by baron and feme, adminiſtratrix, on bond to inteſtate.

himſelf, of a plea, that he render to them 2631 *l.* of lawful money of *Great Britain*, which he unjuſtly detaineth from them; for that whereas the ſaid *N.* on the twentieth day of *January* in the ſeventh year of the reign of our preſent ſovereign lord *George* the third, king of *Great Britain*, *&c.* at *London*, (to wit) in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by a certain writing obligatory, ſealed with the ſeal of him the ſaid *N.* *And* now ſhewn to the court of our ſaid lord the king here, bearing date the day and year laſt above mentioned, did acknowledge himſelf to be held and firmly bound to the ſaid *J.* in the ſaid ſum of 2631 *l.* to be paid to the ſaid *J.* or his certain attorney, executors, adminiſtrators or aſſigns, whenever he ſhould be requeſted ſo to do: *Nevertheleſs* the ſaid *N.* although he by the ſaid *J.* in his life-time, and by the ſaid *W.* and *E.* (after the celebration of the marriage between them, and after the deceaſe of the ſaid *J.*) was thereunto requeſted, hath not paid the ſaid ſum of 2631 *l.* or any part thereof, either to the ſaid *J.* in his life-time, or to the ſaid *W.* and *E.* or either of them, ſince the deceaſe of the ſaid *J.* (to which ſaid *E.* adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid *J. K.* deceaſed, at the time of his death, who died inteſtate, by *W.* by Divine Providence archbiſhop of *Canterbury*, primate and metropolitan of all *England*, after the deceaſe of the ſaid *J.* at *London* aforeſaid, in the pariſh aforeſaid, on the ſeventh day of *November* in the year of our

Profert.

Breach.

Adminſtration committed.

our Lord one thouſand ſeven hundred and ſixty-ſix, was duly committed) but hath hitherto refuſed to pay to them, or either of them, the ſaid 2631 *l.* and ſtill refuſeth to pay the ſame to the ſaid *W.* and *E.* or either of them, in delay of the execution of the adminiſtration of the goods and chattels, rights and credits of the ſaid *J.* whereupon they the ſaid *W.* and *E.* ſay they are injured, and have damage to the amount of 20 *l.* And therefore they bring their ſuit, *&c.* *And* the ſaid *W.* and *E.* bring here into court the letters adminiſtratory aforeſaid of the ſaid archbiſhop, which are dated the day and year aboveſaid, by which it may ſufficiently appear, that the ſaid *E.* hath the adminiſtration of all and ſingular the goods and chattels, rights and credits which belonged to the ſaid *J.* at the time of his death, committed to her in form aforeſaid.

Profert of letters of adminiſtration.

And now at this day, that is to ſay, *Wedneſday* next after fifteen days from the feaſt of *Eaſter* in this ſame term, until which day the ſaid *N.* had leave to imparle to the ſaid bill, and then to anſwer the ſame, as he ſhould be adviſed, before our ſovereign lord the king at *Weſtminſter*, came as well the ſaid *W.* and *E.* by their ſaid attorney, as the ſaid *N.* by *A. S.* his attorney; and the ſaid *N.* defends the force and injury when, *&c.* and craves oyer of the ſaid writing obligatory; and it is read to him in theſe words; that is to ſay, Know all men by theſe preſents, that I *N. G.* of the iſland of *St. Chriſtopher*, merchant, am held and firmly bound unto *J. K.* of *London*,

Imparlance.

Oyer of obligation.

don, merchant, in the ſum of two thouſand ſix hundred and thirty-one pounds of good and lawful money of *Great Britain*, to be paid to the ſaid *J. K.* his certain attorney, executors, adminiſtrators or aſſigns, for which payment well and truly to be made and done, I bind myſelf, my heirs, executors and adminiſtrators, firmly by theſe preſents, ſealed with my ſeal, dated the twentieth day of *January* in the ſeventh year of the reign of our ſovereign lord *George* the third, by the grace of God king of *Great Britain*, *France* and *Ireland*, defender of the faith, *&c. Anno Dom.* 1766. *And* he likewiſe craves oyer of the condition of the ſaid writing obligatory, which is read to him in theſe words; that is to ſay, The condition of this obligation is ſuch, that if the above bounden *N. G.* his heirs, executors or adminiſtrators, ſhall and do well and truly pay, or cauſe to be paid, unto the above-named *J. K.* his executors, adminiſtrators or aſſigns, the full ſum of one thouſand three hundred and fifteen pounds eleven ſhillings and ſixpence of good and lawful money of *Great Britain*, at or before the firſt day of *September* next enſuing the date hereof, without fraud or further delay, then this obligation to be void and of none effect, or elſe to be and remain in full force and virtue: Which being read and heard, the ſaid *N.* ſaith, That the ſaid *W.* and *E.* ought not to have or maintain their ſaid action thereof againſt him the ſaid *N.* becauſe he ſaith, that after the making of the ſaid writing obligatory, and after the ſaid firſt day of *September* mentioned in the ſaid condition,

Oyer of condition.

Plea of payment purſuant to the ſtatute.

condition, and before the day of the exhibiting of the bill of them the ſaid *W.* and *E.* that is to ſay, on the eighteenth day of *January* in the year of our Lord one thouſand ſeven hundred and ſeventy-five, at *London* aforeſaid, that is to ſay, in the ſaid pariſh of *St. Mary le Bow* in the ſaid ward of *Cheap*, he the ſaid *N.* paid to them the ſaid *W.* and *E.* as adminiſtratrix as aforeſaid, the ſaid ſum of one thouſand three hundred and fifteen pounds eleven ſhillings and ſix pence, contained in the ſaid condition according to the form and effect of the ſtatute in ſuch caſe made and provided, together with all intereſt then due thereon: And this he is ready to verify: Wherefore he prays judgment whether the ſaid *W.* and *E.* ought to have or maintain their ſaid action thereof againſt him the ſaid *N. &c.*

And the ſaid *W.* and *E.* ſay, That they, for any thing above alledged by the ſaid *N.* in his ſaid plea, ought not to be barred from having their ſaid action againſt him, becauſe they ſay that the ſaid *N.* hath not paid to them the ſaid *W.* and *E.* the ſaid ſum of one thouſand three hundred and fifteen pounds eleven ſhillings and ſix-pence with all intereſt thereon due, in ſuch manner and form as the ſaid *N.* hath above alledged in his ſaid plea: And this they pray may be inquired of by the country: *And* the ſaid *N.* doth ſo likewiſe: *Therefore* let the jurors come before our lord the king at *Weſtminſter* on next after who are in no wiſe related to the ſaid *W.* and *E.* or to the ſaid *N.*

Replication.

Iſſue.

Venire facias awarded.

N. to make a certain jury of the country between the ſaid parties of the plea aforeſaid, to recognize upon their oaths of the whole truth of and concerning the premiſſes, becauſe as well the ſaid *N.* as the ſaid *W.* and *E.* between whom the matter in variance is, have put themſelves upon that jury. The ſame day is given to the ſaid parties there, *&c.*

B. R. Debt on a bond by an adminiſtrator of the obligee durante minori ætate, &c. (where there had been a former adminiſtrator durante minori ætate) againſt the executrix of the obligor. Lill. Ent. 177. Salk. 37 to 40. 1 Pract. Reg. 37, 43.

London, *to wit.* *T* *B.* adminiſtrator of all and ſingular the goods and chattels, rights and credits, which were of *D. K.* deceaſed, at the time of his death, * during the infancy of *H. K. J. K.* and *D. K.* legitimate † children of the ſaid *D. K.* complains of *E. K.* widow, executrix of the teſtament and laſt will of *J. K.* her late huſband deceaſed, otherwiſe called *J. K.* citizen and vintner of *London*, being in the cuſtody of the marſhal, *&c.* of a plea, that ſhe render to him four hundred pounds of lawful money of *Great Britain*, which ſhe unjuſtly detains from him; for that, to wit, That whereas the

* In an action brought *by* an adminiſtrator *durante minori ætate* of an executor, he ought to aver the executor to be within the age of ſeventeen. *Hob.* 251. *Cro. Jac.* 590. 2 *Rol. Rep.* 186, 204, 209, 466. 2 *Sid.* 60. *Yelv.* 128. If an action be brought *againſt* ſuch adminiſtrator, this averment is not neceſſary. Authorities *ſupra*. *Rol. Rep.* 400; et vide *Vaugh.* 93. 3 *Dan. Ab.* 356, *p.* 6, 7.

† An adminiſtration, during the minority of one not made executor, does not ceaſe until the party is of full age. 5 *Mod.* 395. *Salk.* 39; ſed vide 2 *Jan.* 48.

ſaid

ſaid *J.* in his life-time, to wit, on the twentieth day of *January* in the thirty-firſt year of the reign of his late majeſty *George* the ſecond late king of *Great Britain*, *&c.* at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, ſealed with the ſeal of the ſaid *J.* in his life-time, *And* to the court of our ſaid lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *D. K.* in his life-time in the ſaid four hundred pounds, to be paid to the ſaid *D.* his executors or adminiſtrators, when he ſhould be thereunto afterwards required: *Yet* the ſaid *J.* in his life-time, or the ſaid *E.* after the death of the ſaid *J.* although often required, *&c.* have not yet paid nor has either of them paid the ſaid four hundred pounds to the ſaid *D.* in his life-time, or to one *D. B.* now deceaſed, late adminiſtrator of all and ſingular the goods and chattels, rights and credits, which were of the ſaid *D.* at the time of his death, during the infancy of the ſaid *H. J.* and *D.* or to the ſaid *T.* after the ſeveral deaths of the ſaid *D.* and *D.* or to either of them, (to which ſaid *T.* ſince the deceaſe of the ſaid *D.* to wit, on the fifteenth day of *November* in the year of our Lord one thouſand ſeven hundred and ſixty-ſeven, at *London* aforeſaid, in the pariſh and ward aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits, which were of the ſaid *D.* at the time of his death, during the infancy of the ſaid *H. J.* and *D.* after the death

Profert.

Breach.

Former adminiſtrator durante minori ætate.

Adminiſtration granted to plaintiff.

death of the ſaid *D.* the letters of adminiſtration of the goods of the ſaid *D.* deceaſed, before granted to the ſaid *D.* to the uſe and during the infancy of the ſaid infants, being ceaſed and expired by reaſon of the death of the ſaid *D.* was in due manner committed by *T.* by Divine Providence archbiſhop of *Canterbury*, primate of all *England*, and metropolitan) but intirely refuſed to pay the ſame to the ſaid *D.* in his life-time, and to the ſaid *D.* in his life-time, and to the ſaid *T.* ſince the deceaſe of the ſaid *D.* and *D.* and the ſaid *E.* ſtill refuſes to pay the ſame to the ſaid *T.* and unjuſtly detains, to the damage of the ſaid *T.* of ninety pounds: And thereupon he brings ſuit, *&c.* *And* the ſaid *T.* brings here into court the letters adminiſtratory of the ſaid archbiſhop, which teſtify the committing the ſaid adminiſtration to the ſaid *T.* after the deceaſe of the ſaid *D.* in form aforeſaid, *&c.*

Profert of the letters of adminiſtration.

B. R. Debt on a bond by the adminiſtrator de bonis non adminiſtratis by a late executrix of the obligee againſt baron and feme, the bond being entered into by the feme when ſhe was ſole. Lill. Ent. 166. Ca. in Parl. 15.

London, *to wit.* *W* *T.* adminiſtrator of the goods and chattels which were of *W. K.* unadminiſtered by *A. T.* otherwiſe *K.* deceaſed, late executrix of the teſtament of the ſaid *W. K.* complains of *J. D.* and *E.* his wife, otherwiſe lately called the right honourable *E. V.* viſcounteſs *Purbeck Deffring* in the county of *Norfolk*, widow, being in the cuſtody of the marſhal, *&c.* of a plea, that they render to him one hundred and forty pounds, which they unjuſtly detain; for that, to wit, That whereas the ſaid *E.* whilſt ſhe was ſole, to wit, on the twentieth day of *October* in the twenty-

twenty-ſeventh year of the reign of his late majeſty *George* the ſecond, late king of *Great Britain*, &c. at *London*, to wit, at the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by her writing obligatory, ſealed with the ſeal of the ſaid *E. And* to the court of our lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged herſelf to be held and firmly bound to the ſaid *W. K.* in his life-time in the ſaid one hundred and forty pounds, to be paid to the ſaid *W. K.* his executors, adminiſtrators and aſſigns, when ſhe ſhould be thereto required: *Yet* the ſaid *E.* whilſt ſhe was ſole, although often required, &c. has not paid the ſaid one hundred and forty pounds to the ſaid *W. K.* in his life-time, or to the ſaid *A.* after the death of the ſaid *W. K.* whilſt ſhe was ſole; and the ſaid *J.* and *E.* after the marriage between them was celebrated, have not paid the ſame to the ſaid *A.* whilſt ſhe was ſole, or to the ſaid *A.* and *W. T.* after the marriage between them was celebrated, or to the ſaid *W. T.* ſince the deceaſe of the ſaid *A.* (to which ſaid *W. T.* on the ſecond day of *December* in the year of our Lord one thouſand ſeven hundred and ſeventy-two, at *London* aforeſaid, in the pariſh and ward aforeſaid, adminiſtration of all and ſingular the goods and chattels which were of the ſaid *W. K.* at the time of his death not adminiſtered by the ſaid *A.* was in due manner committed by *J.* by Divine Providence archbiſhop of *Canterbury*, primate of all *England*, and metropolitan) but the ſaid *E.* whilſt ſhe was ſole

Profert of the bond.

Breach.

Adminiſtration de bonis non committed to the plaintiff.

ſole refuſed to pay the ſame to the ſaid *W. K.* in his life-time, or to the ſaid, *A.* ſince the deceaſe of the ſaid *W. K.* whilſt ſhe was ſole; and the ſaid *J.* and *E.* after the marriage celebrated between them as aforeſaid, refuſed to pay the ſame to the ſaid *A.* whilſt ſhe was ſole, or to the ſaid *W. T.* and *A.* after marriage between them was alſo celebrated as aforeſaid, and yet refuſe to pay the ſame to the ſaid *W. T.* ſince the deceaſe of the ſaid *A.* and after the committing the adminiſtration aforeſaid in form aforeſaid, and unjuſtly detain in delay of the faithful adminiſtration aforeſaid, to the damage of the ſaid *W. T.* of twenty pounds: And thereupon he brings ſuit, *&c.* *And* he brings here into court the letters of adminiſtration of the ſaid archbiſhop, which teſtify the committing the ſaid adminiſtration aforeſaid, in form aforeſaid, *&c.*

Profert of the letters of adminiſtration.

B. R. Debt on a bond by an adminiſtrator de bonis non adminiſtratis by a late adminiſtrator of the obligee. Lill. Ent. 187.

Middleſex, *to wit.* *E.* *B.* widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of *J. G.* gent. deceaſed, unadminiſtered by *J. B.* alſo deceaſed, late adminiſtrator of the ſaid *J. G.* complains of *J. B.* eſq; otherwiſe called *J. B.* of the pariſh of *St. James* within the city and liberty of *Weſtminſter*, in the county of *Middleſex*, *&c.* being in the cuſtody of the marſhal, *&c.* of a plea, that he render to her three hundred pounds of lawful money of *Great Britain*, which he unjuſtly detains from her, for that, to wit, That whereas the ſaid *J. B.* on the fifth day of *May* in the year of our

our Lord one thouſand ſeven hundred and ſeventy, at *Weſtminſter* in the county of *Middleſex*, by his writing obligatory, ſealed with the ſeal of the ſaid *J.* *And* to the court of our ſaid lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *J. G.* in his life-time in the ſaid three hundred pounds, to be paid *J. G.* when he ſhould be thereto required: *Yet* the ſaid *J. B.* although often required, *&c.* did not pay the ſaid three hundred pounds to the ſaid *J. G.* in his life-time, or to the ſaid *J. B.* in his life-time, after the death of the ſaid *J. G.* or to either of them; neither has he paid the ſame to the ſaid *E.* ſince the death of the ſaid *J. B.* (to which ſaid *E.* after the ſeveral deaths of the ſaid *J. G.* and *J. B.* to wit, on, *&c.* at, *&c.* adminiſtration of all and ſingular the goods and chattels, rights and credits which were of the ſaid *J. G.* at the time of his death not adminiſtered by *J. B.* was in due form of law committed by *W.* by Divine Providence archbiſhop of *Canterbury*, primate of all *England*, and metropolitan) but he intirely refuſed to pay the ſame to the ſaid *J. G.* in his life-time, or to the ſaid *J. B.* in his life-time, or to the ſaid *E.* after the death of the ſaid *J. B.* and ſtill refuſes to pay the ſame to the ſaid *E.* and unjuſtly detains, to the damage of the ſaid *E.* of twenty pounds: And thereupon ſhe brings ſuit, *&c.* *And* the ſaid *E. B.* brings here into court the ſaid letters of adminiſtration which teſtify the committing the ſaid adminiſtration

Profert of the bond.

Breach.

Adminiſtration granted to the plaintiff.

Profert of the letters of adminiſtration.

niſtration in form aforeſaid, the date whereof is on the day and year aboveſaid.

B. R. Debt on a bond by the executor of the obligee againſt the heir at law of the obligor. Lill. Ent. 147.

Surry, *to wit.* S. Q. executor of the teſtament and laſt will of *P. Q.* deceaſed, complains of *W. D.* heir of *J. D.* deceaſed, to wit. brother and heir of *R. D.* ſon and heir of *W. D.* brother and heir of the ſaid *J. D.* late of *Haſcombe* in the county of *Surry*, yeoman, deceaſed, being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to him one hundred and twenty pounds of lawful money of *Great Britain*, which he unjuſtly detains; for this, to wit, That whereas the ſaid *J.* (whoſe heir the ſaid *W. D.* the preſent defendant now is) in his life-time, to wit, on the twenty-third day of *October* in the twenty-ninth year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, *&c.* at *Haſcombe* in the county of *Surry* aforeſaid, by his writing obligatory, ſealed with the ſeal of the ſaid *J.* and to the court of our lord the now king here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *P.* in his life-time in the ſaid one hundred and twenty pounds, to be paid to the ſaid *P.* his executors or adminiſtrators, when he ſhould be thereunto afterwards required, and to the ſaid payment well and faithfully to be made, the ſaid *J.* in his life-time bound himſelf and his heirs by the ſaid writing: *Yet* the

Profert.

Breach.

ſaid *J.* in his life-time, nor the ſaid *W.* brother of the ſaid *J.* after the deceaſe of the ſaid *W.* brother of the ſaid *J.* nor the ſaid *W. D.* the preſent defendant, after the death of the ſaid *R.* although often required, *&c.* have not yet paid, nor has either of them paid the ſaid one hundred and twenty pounds to the ſaid *P.* in his life-time, or to the ſaid *S.* after the death of the ſaid *P.* but intirely refuſed to pay the ſame to the ſaid *P.* in his life-time, and to the ſaid *S.* after the death of the ſaid *P.* And the ſaid *W. D.* the preſent defendant, ſtill refuſes to pay the ſame to the ſaid *S.* and unjuſtly detains in delay of the faithful execution of the ſaid teſtament, and to the damage of the ſaid *S.* of fifty pounds; and thereupon he brings ſuit, *&c.* *And* the ſaid *S.* brings here into court the ſaid letters teſtamentary of the ſaid *P.* whereby it ſufficiently appears to the court of our ſaid lord the now king here, that the ſaid *S.* is executor of the ſaid teſtament of the ſaid *P.* and has the adminiſtration thereof, *&c.*

Profert of the letters teſtamentary.

And now at this day, to wit, *Tueſday* next after the octave of *St. Hilary* in this ſame term, to which day the ſaid *W. D.* the preſent defendant had leave to imparle to the ſaid bill, and then to anſwer, *&c.* before our lord the king at *Weſtminſter*, came as well the ſaid *S.* by his attorney aforeſaid, as the ſaid *W. D.* the preſent defendant, by *C. S.* his attorney; and the ſaid *W. D.* the preſent defendant comes and defends the force and injury, when, *&c.*

Imparlance.

Plea, riens per diſcent tempore exhibitionis billæ.

&c. and ſays, that he, by virtue of the ſaid writing obligatory, ought not to be charged with the ſaid debt as heir of the ſaid *J. D.* becauſe proteſting that that writing is not the deed of the ſaid *J. D.* for plea the ſaid *W. D.* the preſent defendant ſays, that he has not lands or tenements, by hereditary deſcent of the ſaid *J. D.* in fee-ſimple, nor had he on the ſaid day of exhibiting the ſaid bill, nor at any time afterwards; and this he is ready to verify: Wherefore he prays, if he as heir of the ſaid *J. D.* ought to be charged with the ſaid debt by virtue of the ſaid writing.

Replication, qu' il' ad aſſets.

And the ſaid *S.* ſays, that notwithſtanding any thing by the ſaid *W. D.* the preſent defendant above by pleading alledged, he the ſaid *W. D.* the preſent defendant as heir of the ſaid *J. D.* ought to be charged with the ſaid debt by virtue of the ſaid writing obligatory, becauſe he ſays, that on *Monday* next after the morrow of *All Souls* in the thirteenth year of the reign of our ſovereign lord *George* the third, now king of *Great Britain*, on which day the ſaid bill was exhibited *in* the court here as aforeſaid, the ſaid *W. D.* the preſent defendant had divers lands and tenements by hereditary deſcent from the ſaid *W. D.* in fee-ſimple, from whence he could have ſatisfied the ſaid *S.* of the debt aforeſaid, to wit, at *Haſcombe* aforeſaid in the county aforeſaid; and he prays that this may be inquired of by the country. *And* the ſaid *W. D.* the preſent defendant does ſo likewiſe, *&c.* *Therefore* let a jury thereupon come before our lord

Iſſue.

Venire awarded.

lord the king at *Weſtminſter*, on *Thurſday* next after the morrow of the purification of the bleſſed virgin *Mary*; and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid at the ſame place, *&c.*

London, *to wit.* D. *H.* merchant-taylor, complains of Sir *T. L.* bart. ſon and heir of *W. L.* eſq; lately deceaſed, otherwiſe called *W. L.* of *Thorp* in the county of *Surry*, eſq; being in the cuſtody of the marſhal, *&c.* of a plea, that he render to him three hundred pounds of lawful money of *Great Britain*, *&c.* which he owes him and unjuſtly detains, for that, to wit, That whereas the ſaid *W.* in his life-time, to wit, on the ninth day of *May* in the year of our Lord one thouſand ſeven hundred and ſeventy, at *London*, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, ſealed with the ſeal of the ſaid *W.* in his life-time, and to the court of our ſaid lord the king now here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *D.* in the ſaid three hundred pounds, to be paid to the ſaid *D.* when he ſhould be thereunto required; and to the ſaid payment well and faithfully to be made the ſaid *W.* in his life-time bound himſelf and his heirs by the ſaid writing: *Yet* the ſaid *W. L.* in his life-time, and the ſaid Sir *T.* ſince the deceaſe of the ſaid *W.* although often required, *&c.* have not yet paid, nor has either of them

B. R. Debt on a bond againſt the heir of the obligor. Lill. Ent. 180. Pract. Reg. 18.

Profert.

Breach.

paid the ſaid three hundred pounds to the ſaid *D.* but the ſaid *W.* in his life-time, and the ſaid Sir *T.* ſince the deceaſe of the ſaid *W.* intirely refuſed to pay him the ſame; and the ſaid Sir *T.* ſtill refuſes to pay him the ſame, to the damage of the ſaid *D.* of twenty pounds; and thereupon he brings ſuit, *&c.*

Cognovit actionem.

And the ſaid *T.* by *G. B.* his attorney, comes and defends the wrong and injury, when, *&c.* and ſays, that he cannot deny the ſaid action of the ſaid *D.* nor but that the ſaid writing is the ſaid deed of the ſaid *W.* his father, nor but that he detains from the ſaid *D.* the ſaid three hundred pounds, in the form in which the ſaid *D.* has above declared againſt him: *Yet* the ſaid *T.* ſays, that he has not any lands or tenements by hereditary deſcent from the ſaid *W.* his father in fee-ſimple, nor had on the day of exhibiting the ſaid bill of the ſaid *D.* nor at any time afterwards, *Except* four meſſuages and ſeventeen acres and two roods of land, with the appurtenances in *Thorpe* and *Puttenham* in the county of *Surry*, of the yearly value of one hundred pounds, and one meſſuage with the appurtenances in *Eaſt Witham* in the county of *Kent*, of the yearly value of forty ſhillings: *And except* the reverſion of the manor of *Hall Place* with the appurtenances, and of five meſſuages, ſix cottages, two dove-houſes, three gardens, three orchards, ſix hundred and fifty acres of land, two hundred acres of meadow, five hundred acres of paſture, one hundred acres of wood, three hundred acres of furze and heath, two hundred acres of moor, and fifty ſhillings rent,

Sed riens per diſcent.

Except four meſſuages, &c.
8 Rep. 134.

And the reverſion of, &c.

rent, with the appurtenances in *Thorpe*, *Chertſey* and *Egham* in the ſaid county of *Surry*, and in the rectory of *Thorpe* with the appurtenances, and of one meſſuage, one dove-houſe, one hundred acres of land, fifty acres of meadow, one hundred acres of paſture, twenty acres of wood, and fifty acres of furze and heath, with the appurtenances in *Puttenham*, *Elſted*, *Seale* and *Tongham* in the ſaid county of *Surry*, which ſaid manor, rectory, tenements and moiety, with the appurtenances, Sir *J. L.* bart. and *E.* his wife, who was the wife of the ſaid *W.* hold for the term of the life of the ſaid *E.* in right of the ſaid *E.* of no value during the life of the ſaid *E.* and after the death of the ſaid *E.* of the yearly value of five hundred pounds: *And except* the reverſion of the manor of *Stains*, with the appurtenances, and of one cottage, one parcel of land, containing eight and twenty feet in breadth, and eighty-three feet in length, and of another parcel in breadth twenty-four feet, with the appurtenances in *Stains* in the county of *Middleſex*, and of one meſſuage and ſixteen acres of land, with the appurtenances in *Addington* in the ſaid county of *Surry*, and of the yearly rent of eleven pounds iſſuing out of one mill, one meſſuage, and two acres of meadow in *Stains* aforeſaid in the ſaid county of *Middleſex*, and of the fair and markets to be held in *Stains* aforeſaid, and of the chief penſion of two ſhillings iſſuing out of the vicarage of *Stains* aforeſaid, after the expiration of ninety-nine years, commencing from the ſeventeenth day

And the reverſion, &c.

of *May* in the year of our Lord one thouſand ſeven hundred and ſixty-ſix, granted thereof to one *W. D.* eſq; by the ſaid *W.* in his life-time, under the yearly rent of a pepper-corn, by certain indentures made at *Stains* aforeſaid on the ſame ſeventeenth day of *May* in the year of our Lord one thouſand ſeven hundred and ſixty-ſix aforeſaid, between the ſaid *W.* of the one part, and the ſaid *W. D.* of the other part, bearing date the ſame day and year; and this he is ready to verify: *Wherefore* he prays judgment, if he, as ſon and heir of the ſaid *W.* ought to be charged with the ſaid debt by virtue of the ſaid writing, except in the ſaid four meſſuages and ſeventeen acres and two roods of land, with the appurtenances, in *Thorpe* and *Puttenham* aforeſaid, and in the ſaid meſſuage with the appurtenances in *Eaſt Wickham* aforeſaid, and except in the ſaid ſeveral reverſions when they ſhall happen, *&c.* with this, that he the ſaid Sir *T. L.* will verify that the ſaid *E.* is ſtill in being, and alive, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid.

Pet' judic' ſi, &c.

And the ſaid *D.* for that the ſaid Sir *T.* does not deny the ſaid action of the ſaid *D.* nor but that the ſaid writing is the deed of the ſaid *W.* nor but that the ſaid Sir *T.* detains from the ſaid *D.* the ſaid three hundred pounds in the form in which the ſaid *D.* has above thereof declared againſt him, prays judgment and his ſaid debt, together with his damages by the occaſion of the detaining that debt, to be adjudged to him, to be levied of the ſaid four meſſuages, *&c.* and of the ſaid ſeveral

Plaintiff prays judgment.

ſeveral reverſions, with the appurtenances, when they ſhall happen, &c. *It is therefore conſidered*, that the ſaid *D.* recover againſt the ſaid Sir *T.* his ſaid debt, and alſo his damages by the occaſion of the detaining that debt to fifty ſhillings, adjudged to the ſaid *D.* by his aſſent, to be levied of the ſaid four meſſuages and ſeventeen acres, and two roods of land with the appurtenances in *Thorpe* and *Puttenham* aforeſaid; and of the ſaid meſſuage with the appurtenances in *Eaſt Wickham* aforeſaid; and of the ſaid ſeveral reverſions when they ſhall happen; and the ſaid Sir *T.* in mercy, &c.

Judgment of the tenements confeſſed, and of the reverſions quando acciderint.

Middleſex, *to wit.* SIR *J. R.* knt. and *E.* his wife, executrix of the teſtament and laſt will of *J. L. H.* eſq; deceaſed, complain of *G. P.* ſon and heir of *S. P.* widow, deceaſed, who was heir and deviſee of *W. W.* of the *Inner Temple*, eſq; being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to them four hundred pounds of lawful money of *Great Britain*, which he unjuſtly detains from them; for that, to wit, That whereas the ſaid *W.* in his life-time, to wit, on the twenty-ſeventh day of *February* in the year of our Lord one thouſand ſix hundred and eighty-one, at the pariſh of *St. Clement Danes* in the county of *Middleſex* aforeſaid, by his writing obligatory, ſealed with the ſeal of the ſaid *W.* *And* to the court of our ſaid lord the now king here ſhewn, the date whereof is on the ſame day and

B. R. Debt on a bond by baron and feme, executrix of the obligee, againſt the heir of the heir and deviſee of the obligor. Lill. Ent. 172.

Bond made in 1681, and ſued in 1718.

Profert of the bond.

and year, acknowledged himſelf to be bound to the ſaid *J. L. H.* in his life-time in the ſaid four hundred pounds, to be paid to the ſaid *J.* when he ſhould be thereunto required, and to the ſaid payment to be well and faithfully made, the ſaid *W.* bound himſelf and his heirs by the ſaid writing: *Yet* the ſaid *W.* in his life-time, and the ſaid *S.* who is heir and deviſee of the ſaid *W.* after his death, and the ſaid *G.* ſon and heir of the ſaid *S.* after the death of the ſaid *S.* although often required, *&c.* have not yet paid, nor has any one of them paid the ſaid four hundred pounds to the ſaid *J.* in his life-time, or to the ſaid *I.* and *E.* after the death of the ſaid *J.* or to any one of them, but have intirely refuſed to pay the ſame to them, or to any one of them; and the ſaid *G.* ſtill refuſes to pay the ſame to the ſaid *I.* and *E.* and unjuſtly detains, to the damage of the ſaid *I.* and *E.* of ten pounds: And thereupon they bring ſuit, *&c.* *And* the ſaid *I.* and *E.* bring here into court the letters teſtamentary of the ſaid *J.* by which it plainly appears to the court here, that the ſaid *E.* is executrix of the teſtament and laſt will of the ſaid *J.* And thereof has adminiſtration, *&c.*

Breach.

Profert of the probate.

When, *&c.* and he prays oyer of the ſaid writing obligatory, and it is read to him, *&c.* and he alſo prays oyer of the condition of the ſaid writing, and it is read to him in theſe words, to wit, The condition of this obligation is ſuch, that if the above bounden *W. W.* and *P. H.* or either of them, their or either of their heirs, executors or adminiſtrators, do

Oyer.

Condition of the bond.

do well and truly pay or cauſe to be paid unto the above named *J. L. H.* his executors, adminiſtrators or aſſigns, the full ſum of two hundred and twelve pounds of good and lawful money of *England*, on the firſt day of *March* which ſhall be in the year of our Lord one thouſand ſix hundred and eighty-two, then this obligation to be void, or elſe to remain in full force: Which being read and heard the ſaid *G.* ſays, that the ſaid *I.* and *E.* ought not to have or maintain the ſaid action thereupon againſt him, becauſe he ſays that the ſaid *W. W.* in his life time, after the ſaid firſt day of *March* in the ſaid condition mentioned, and before the exhibiting the ſaid bill, to wit, *on the twenty-ſeventh day of February* in the year of our Lord one thouſand ſix hundred and ninety-two, paid to the ſaid *J. L. H.* the ſaid two hundred pounds, being the principal ſum due to the ſaid *J. L. H.* by the condition of the ſaid writing, together with all intereſt for the ſaid two hundred pounds then due, to wit, at the ſaid pariſh of *St. Clement Danes* in the county of *Middleſex* aforeſaid: And this he is ready to verify; Wherefore he prays judgment if the ſaid *I.* and *E.* ought to have or maintain their action thereupon againſt him, *&c.*

Plea, that obligor paid the money at a future day, ante exhibitionem billæ.

Naught as it ties down the evidence to that day.

And the ſaid *I.* and *E.* ſay, That they, by any thing before alledged, ought not to be barred from having their ſaid action againſt the ſaid *G.* becauſe they ſay that the ſaid *W. W.* in his life-time, after the ſaid firſt day of *March* in the ſaid condition mentioned, and before the exhibiting the ſaid bill, did not pay to the

Replication, that the obligor did not pay, &c.

the ſaid *J. L. H.* the ſaid two hundred pounds and intereſt due for the ſame, as the ſaid *G.* has above by pleading alledged: And this they pray may be inquired of by the country: *And* the ſaid *G.* likewiſe, *&c.* *Therefore* let a jury thereupon come before our lord the king at *Weſtminſter* on next after and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the ſaid parties aforeſaid at the ſame place, *&c.*

Iſſue.

Venire awarded.

Verdict for the plaintiffs, *Mich.* 5 *Geo.* 1.

Hilary *term in the eighth year of king* William *the third.*

Roll 698.

B.R. Declaration in debt on a bill penal, payable at ſeveral times by the obligee againſt baron and feme, adminiſtratrix of the obligor. Lill.Ent.158. Vide 2 R. Raym. 1510. 3 D.A. 381, p. 6. 2 Vent. 84. 1 Sid. 228.

London, *to wit.* *N. A.* complains of *J. S.* gent. and *M.* his wife, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of *W. F.* lately deceaſed, who died inteſtate, as it is ſaid, otherwiſe lately called *W. F.* citizen and merchant-taylor of *London*, in the cuſtody of the marſhal, *&c.* of a plea, that they render to him thirty pounds of lawful money of *England*, which they unjuſtly detain from him; for that, to wit, That whereas the ſaid *W. F.* in his life-time, to wit, on the twenty-ninth day of *September* in the year of our Lord one thouſand ſix hundred and ninety-four, at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his will obligatory,

obligatory, ſealed with the ſeal of the ſaid *W.* in his life-time, *And* to the court of our ſaid lord the preſent king here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be indebted to the ſaid *N.* in the ſum of fifteen pounds ten ſhillings and ſix-pence of lawful money of *England*, to be paid to the ſaid *N.* his executors, adminiſtrators or aſſigns, in manner following, to wit, the ſum of five pounds, part thereof, on the twenty-ninth day of *October* then next enſuing the date of the ſaid bill obligatory, and the ſum of five pounds, further part thereof, on the twenty-ninth day of *November* then next enſuing, and the ſum of five pounds ten ſhillings and ſix-pence the reſidue in full thereof, on the twenty-fourth day of *December* then next enſuing the date of the ſaid bill obligatory; and for the true payment thereof the ſaid *W. F.* by the ſaid bill firmly bound himſelf, his heirs, executors and adminiſtrators, in the ſaid ſum of thirty pounds; and the ſaid *N.* in fact ſays, that the ſaid *W. F.* in his life-time, or the ſaid *J.* and *M.* after the death of the ſaid *W.* did not, nor did either of them, pay to the ſaid *N.* on the ſaid twenty-ninth day of *October* in the ſaid bill above ſpecified the ſaid ſum of five pounds, which upon that day they ought to have paid him according to the form and effect of the ſaid bill obligatory, whereby an action accrued to the ſaid *N.* to demand and have of the ſaid *W.* in his life-time, and of the ſaid *J.* and *M.* after the death of the ſaid *W.* the ſaid thirty pounds; Profert.

Yet

Breach.

Yet the ſaid *W.* in his life time, and the ſaid *J.* and *M.* after the death of the ſaid *W.* although often required, *&c.* have not paid, nor has either of them paid, the ſaid thirty pounds to the ſaid *N.* but the ſaid *J.* and *M.* ſtill refuſe to pay the ſame to the ſaid *N.* and unjuſtly detain the ſame from him, to the damage of the ſaid *N.* of twenty pounds; And thereupon he brings ſuit, *&c.*

Plea, a judgment in C. B. recovered againſt the inteſtate in debt ſur mutuatus. 1 R. Raym. 263. Salk. 298. Carth. 449. Comb. 444, 449.

And the ſaid *J.* and *M.* *&c.* and ſay, that the ſaid *N.* ought not to have or maintain his ſaid action thereupon againſt them, becauſe they ſay, that the ſaid *W. F.* in his life-time, to wit, on the firſt day of *July* in the fifth year of the reign of our lord the preſent king and lady the late queen, at *London*, to wit, in the pariſh and ward aforeſaid, borrowed of one *R. W.* gent. one hundred pounds, to be paid to the ſaid *R.* when he the ſaid *W.* ſhould be thereto required; whereby the ſaid *R.* for recovery of the ſaid debt, to wit, in the term of *St. Michael* in the ſaid fifth year of the reign of our ſaid lord the preſent king and lady the late queen, in the court of our ſaid lord the king and lady the queen, at *Weſtminſter* in the county of *Middleſex*, impleaded the ſaid *W. F.* in his life-time, in a plea of debt for the ſaid one hundred pounds, in which ſaid plea it was in ſuch manner proceeded in the ſaid court of our ſaid lord the king and lady the late queen of the bench, that the ſaid *R.* in the ſaid term of *St. Michael* in the fifth year aforeſaid, by the judgment of the ſaid court, recovered againſt the ſaid *W. F.* in his life-time as well the ſaid debt of

one

one hundred pounds, as thirty ſhillings for his damages which he had, by occaſion of the detaining of that debt, by the ſaid court of our ſaid lord the preſent king and ſaid lady the late queen of the bench adjudged to the ſaid *R.* by his aſſent, as by the record and proceedings thereof remaining in the court of our ſaid lord the preſent king of the bench plainly appears; *And* the ſaid *J.* and *M.* further ſay, that the ſaid *W. F.* in his life-time, to wit, on the twentieth day of *March* in the fourth year of the reign of our ſaid lord the preſent king and lady the late queen of *England*, *&c.* at *London* aforeſaid, in the pariſh and ward aforeſaid, by his writing obligatory,* acknowledged himſelf to be bound to one *G. E.* in one hundred pounds, to be paid to the ſaid *G.* when he the ſaid *W. F.* ſhould be thereto required; And that after the death of the ſaid *W. F.* the ſaid one hundred pounds being no ways paid or ſatisfied, the ſaid *G.* for recovery of his ſaid debt after the death of the ſaid *W. F.* to wit, in the term of *St. Michael* in the ſixth year of the reign of our ſaid lord the now king and lady the late queen, in the ſaid court of our lord the now king and

A judgment againſt defendant for a debt on bond due by inteſtate.

* If an executor in pleading a judgment only ſhews how the plaintiff had declared againſt him *pro eo quod cum teſtator per ſcriptum ſuum*, *&c.* and that he thereupon confeſſed the action, this plea is good, though not therein directly alledged, that the teſtator was bound in the ſaid bond. *Robinſon* and *Corbet.* 1 *Lutw.* 662. *Vide* 1 *Sid.* 230. 1 *Keb.* 808. *Cro. Eliz.* 462.

lady

lady the late queen of the bench at *Weſtminſter* aforeſaid, impleaded the ſaid *J.* and *M.* as adminiſtratrix of the goods and chattels of the ſaid *W. F.* in a plea of debt for the ſaid one hundred pounds of and upon the ſaid writing obligatory, in which ſaid plea it was in ſuch manner proceeded, that the ſaid *G.* in the ſame term of *St. Michael* in the ſixth year aforeſaid, by the judgment of the ſaid court of our ſaid lord the preſent king and lady the late queen of the bench, recovered againſt the ſaid *J.* and *M.* the ſaid one hundred pounds, and his damages by the occaſion of the detaining that debt, to forty ſhillings, by the ſaid court adjudged to the ſaid *G.* by his aſſent, to be levied of the goods and chattels which were of the ſaid *W. F.* at the time of his death in the hands of the ſaid *J.* and *M.* to be adminiſtered, if they had ſo much thereof in their hands to be adminiſtered; and if they had not ſo much in their hands, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *J.* and *M.* as by the ſaid record and proceedings remaining in the ſaid court of our lord the preſent king of the bench at *Weſtminſter* more fully appears; *And* the ſaid *J.* and *M.* further ſay, that they have fully adminiſtered all the goods and chattels which were of the ſaid *W. F.* at the time of his death in their hands to be adminiſtered; and that they have not, nor on the day of exhibiting the ſaid bill of the ſaid *N.* or at any time afterwards, had any goods or chattels which were of the ſaid *W. F.* at the time of his death in their hands to

Plene adminiſtravit.

Have no goods except to the value of 10*l.*

to be adminiſtered, except goods and chattels to the value of ten pounds, which are not ſufficient to ſatisfy the ſeveral judgments given in form aforeſaid, and which are bound and liable to the execution and ſatisfaction thereof, with this, that they the ſaid *J.* and *M.* will verify that the ſaid ſeveral debts, in the ſaid ſeveral judgments as aforeſaid recovered, were and ſtill are true and juſt debts, and no ways paid; and that the ſaid ſeveral judgments are in their full force and vigour, no ways annulled, reverſed or ſatisfied; and that the ſaid *W. F.* and the ſaid *J.* and *M.* in the ſaid ſeveral judgments reſpectively named, and the ſaid *W. F.* and the ſaid *J.* and *M.* named in the bill of the ſaid *N.* are the ſame perſons, and not other or different: And this they are ready to verify: Wherefore they pray judgment if the ſaid *N.* ought to have or maintain his ſaid action thereupon againſt them, *&c.*

Which are liable to the judgments.

Averment, That the ſaid debts are juſt debts.

The judgments in force;

And the perſons the ſame.

N. Hooper.

And the ſaid *N.* ſays that he, by any thing by the ſaid *J. S.* and *M.* his wife by pleading alledged, ought not to be barred from having ſaid action thereupon againſt them; becauſe as to the ſaid judgment obtained againſt the ſaid *J. S.* and *M.* as aforeſaid, in the ſaid plea mentioned, the ſaid *N.* ſays, that thirty pounds only and not more of the ſaid money by the ſaid *G. E.* againſt the ſaid *J.* and *M.* in form aforeſaid were juſtly and truly due to the ſaid *G.* and that after the giving

Replication.

As to one judgment, that only 30l. was due.

Which is paid:

the ſaid judgment, to wit, on the firſt day of *March* in the ſeventh year of the reign of our ſaid lord the preſent king, at the pariſh and ward aforeſaid, the ſaid *J.* and *M.* paid to the ſaid *G. E.* the ſaid thirty pounds in full ſatisfaction and diſcharge of the judgment; and the ſaid *G.* then and there received and accepted the ſaid thirty pounds of the ſaid *J.* and *M.* in full ſatisfaction and diſcharge of that judgment, and of all the money thereby recovered: *Yet* the ſaid *J.* and *M.* fraudulently and deceitfully, and with intention to deceive and defraud the ſaid *N.* of his ſaid debt, have ſtill permitted the ſaid judgment, ſo as aforeſaid obtained againſt them by the ſaid *G.* to remain and be in its full ſtrength and force, to wit, at the pariſh and ward aforeſaid: And this he is ready to verify: Wherefore he prays judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.* *And* as to the ſaid judgment by the ſaid *H. C.* obtained againſt the ſaid *J.* and *M.* as aforeſaid in the ſaid plea above mentioned, the ſaid *N.* ſays, that twenty and eight pounds only and not more of the money aforeſaid, by the ſaid *H. C.* recovered againſt the ſaid *J.* and *M.* in form aforeſaid, were juſtly and truly due to the ſaid *H.* at the time of giving the ſaid judgment; and that from the time of giving the ſaid judgment hitherto the ſaid *H. C.* was always ready and ſtill is ready to receive and accept of the ſaid *J.* and *M.* the ſaid twenty and eight pounds, in full ſatisfaction and diſcharge of the

And the judgment kept on foot per fraudem.

As to another judgment, only 28l. was due;

Which the plaintiff therein is ready to accept in full ſatiſfaction;

the ſaid laſt mentioned judgment, and of all the money thereby recovered, to wit, at the pariſh and ward aforeſaid: *Yet* the ſaid *J.* and *M.* have hitherto deceitfully delayed the payment of the ſaid twenty and eight pounds to the ſaid *H. C.* and have permitted the ſaid laſt mentioned judgment ſtill to be and remain in its full force and ſtrength with intent to defraud and deceive the ſaid *N.* of his ſaid debt, to wit, at the pariſh and ward aforeſaid: And this he is ready to verify; Wherefore he prays judgment and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.* *And* the ſaid *N.* further ſays, that the ſaid *J.* and *M.* on the day of exhibiting this bill of the ſaid *N.* had divers goods and chattels which were of the ſaid *W. F.* at the time of his death in their hands to be adminiſtered, to the value of the debt of the ſaid *N.* above demanded, beſides goods and chattels ſufficient to ſatisfy the ſaid *R. W.* and *N. A.* of their ſeveral debts and damages aforeſaid recovered againſt the ſaid *J. S.* and *M.* his wife as aforeſaid, and alſo twenty and eight pounds due as aforeſaid to the ſaid *H. C.* whereof they could have ſatisfied the ſaid *N.* of his ſaid debt, to wit, at the pariſh and ward aforeſaid; and this he prays may be inquired of by the country, *&c.*

But defendants have delayed payment;

And keep the judgment on foot per fraudem.

That defendants have aſſets ultra ſufficient to pay plaintiff.

And the ſaid *J.* and *M.* ſay, that the ſaid plea by the ſaid *N.* above in manner and form aforeſaid by replying pleaded, and the matter therein contained, are not ſufficient in law for the ſaid *N.* to have or maintain his

Demurrer.

ſaid action againſt them the ſaid *J.* and *M.* and that they have no need and are not bound by the law of the land in any manner to anſwer to the ſaid plea in manner and form aforeſaid pleaded; and this they are ready to verify: Wherefore, for default of a ſufficient replication of the ſaid *N.* in this behalf, the ſaid *J.* and *M.* pray judgment, and that the ſaid *N.* may be barred from having his ſaid action againſt them the ſaid *J.* and *M.* *&c.*

Cauſes of demurrer. And for cauſes of demurring in law according to the form of the ſtatute in ſuch caſe made and provided, the ſaid *J.* and *M.* ſhew here to the court, and demonſtrate the following caſes, to wit, for that the ſaid replication is double, and for that there are ſeveral concluſions, and the ſaid *N.* four times prays judgment, whereas he ought to have prayed judgment but once; and for that the ſaid *N.* ill concludes to the country when he ought not.

Edward Northey,
Nicholas Hooper.

Joinder. *And* the ſaid *N.* ſays, that the ſaid plea by him the ſaid *N.* in manner and form aforeſaid above by replying pleaded, and the matter therein contained, are good and ſufficient in law for him the ſaid *N.* to have and maintain his ſaid action againſt the ſaid *J.* and *M.* which ſaid plea and the matter therein contained he the ſaid *N.* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *J.* and *M.* do not anſwer the ſaid plea, nor

nor as yet have any ways denied it, he the ſaid *N.* as before, prays judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.* *But* becauſe the court of our ſaid lord the king now here is not yet adviſed about giving judgment of and concerning the premiſes, day is therefore given to the ſaid parties to come before our lord the king at *Weſtminſter*, until next after to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof. Continuance.

Trinity *term in the thirtieth and thirty-firſt years of the reign of king* George *the ſecond.*

Middleſex, *to wit.* *A.* *F.* aſſignee of *William Beckford*, eſq; and *Ive Whitebread*, eſq; late ſheriff of the county of *Middleſex*, according to the form of the ſtatute in ſuch caſe made and provided, complains of *C. D.* gentleman, one of the attornies of the court of our lord the king, before the king himſelf preſent here in court in his own perſon, of a plea, that he render to the ſaid *A.* thirty-ſix pounds of lawful money of *Great Britain*, which he owes to and unjuſtly detains from him: For that whereas he the ſaid *A.* after the firſt day of *Trinity* term in the year of our Lord one thouſand ſeven hundred and ſix, to wit, on the ſeventh day Declaration on a bail-bond againſt an attorney. B. R. Bill of Middleſex ſued out.

of *July* in the thirtieth year of the reign of his preſent majeſty, ſued and proſecuted out of his ſaid majeſty's court, before the king himſelf, the ſaid court then and ſtill being at *Weſtminſter* in the county of *Middleſex* aforeſaid, his ſaid majeſty's certain precept called a bill of *Middleſex*, directed to the then ſheriff of *Middleſex*, by which ſaid precept our ſaid lord the now king commanded the ſaid then ſheriff, that he ſhould take one *T. L.* if he might be found in his bailiwic, and him ſafely keep, ſo that he might have his body before the lord the king at *Weſtminſter*, on *Saturday* next after the morrow of *All Souls* then next following, to anſwer to the ſaid *A.* in a plea of treſpaſs, and alſo to a bill of the ſaid *A.* againſt the ſaid *T.* for forty pounds upon promiſe, according to the cuſtom of the court of our lord the king, before the king himſelf to be exhibited; and that the ſaid then ſheriff ſhould have then there that precept, on which ſame precept an indorſement in writing was duly made, requiring bail for eighteen pounds, by virtue of an affidavit of the cauſe of action before then duly made and of record in the ſaid court according to the form of the ſtatute in ſuch caſe made and provided, which ſaid precept ſo indorſed afterwards, and before the return thereof, to wit, on the fourth day of *Auguſt* in the thirtieth year aforeſaid, at *Weſtminſter* aforeſaid, was delivered by the ſaid *A.* to the aforeſaid *William Beckford*, eſq; and *Ive Whitebread*, eſq; who then and from thence, until and at and after the arreſt

Affidavit of the debt.

Bill of Middleſex delivered to the ſheriff.

reſt hereafter mentioned, was ſheriff of the ſaid county of *Middleſex*, to be executed in due form of law, by virtue of which ſaid precept the ſaid *William Beckford*, eſq; and *Ive Whitebread*, eſq; ſo being ſheriff of the ſaid county of *Middleſex*, as aforeſaid, afterwards and before the return of the ſaid precept, to wit, on the ſaid fourth day of *Auguſt* in the thirtieth year aforeſaid, within the ſaid then ſheriff's bailiwic, to wit, at *Weſtminſter* aforeſaid, in the county of *Middleſex* aforeſaid, took and arreſted the ſaid *T. L.* by his body, and then and there had him in his cuſtody at the ſuit of the ſaid *A.* by virtue of the ſaid precept; and the ſaid *T. L.* by virtue of the ſaid precept being ſo arreſted and in cuſtody of the ſaid then ſheriff, he the ſaid then ſheriff of the ſaid county of *Middleſex*, took bail for the appearance of the ſaid *T. L.* at the return of the ſaid precept according to the exigency of the ſaid precept; and on that occaſion the ſaid *C D.* as bail or ſecurity for the ſaid *T. L.* on the ſaid fourth day of *Auguſt* in the ſaid thirtieth year of the reign of his preſent majeſty at *Weſtminſter* aforeſaid, in the county aforeſaid, by his certain writing obligatory, commonly called a bail-bond, ſealed with his ſeal, and now ſhewn to the court of our lord the king before the king himſelf here, the date whereof is the ſame day and year laſt aforeſaid, became held and firmly bound to the ſaid *William Beckford*, and *Ive Whitebread* then being ſheriff of the county of *Middleſex* aforeſaid, by the name of *William Beckford*, eſq; and *Ive Whitebread*, eſq; ſheriff

Defendant thereon arreſted.

Bail-bond given.

riff of the county of *Middleſex*, in the ſaid thirty-ſix pounds of good and lawful money of *Great Britain*, to be paid to the ſaid then ſheriff or his aſſigns, when he the ſaid *C. D.* ſhould be thereunto afterwards requeſted, under this condition, that if the ſaid *T. L.* did appear before the lord the king at *Weſtminſter*, on *Saturday* next after the morrow of *All Souls* aforeſaid, to anſwer to the ſaid *A.* of the ſaid plea of treſpaſs, as alſo to the ſaid bill of the ſaid *A.* againſt the ſaid *T.* of forty pounds upon promiſe, according, *&c.* to be exhibited; then the ſaid obligation to be void and of no force, otherwiſe to ſtand and remain in full force, vigour and effect, as by the ſaid writing obligatory and the condition thereof (relation being thereunto had) more fully and at large appears; and the ſaid *A.* ſaith, that the ſaid *T. L.* did not appear before the ſaid lord the king at *Weſtminſter*, on *Saturday* next after the morrow of *All Souls* aforeſaid mentioned in the ſaid condition according to the form and effect of the ſaid condition, whereby the ſaid writing obligatory became forfeited. And whereas the ſaid *William Beckford*, eſq; and *Ive Whitebread*, eſq; ſo being late ſheriff of the ſaid county of *Middleſex* as aforeſaid, afterwards and before the payment of the ſaid thirty-ſix pounds contained in the ſaid writing obligatory, or any part thereof, to wit, on the twenty-ſixth day of *April* in the year of our Lord one thouſand ſeven hundred and fifty-ſeven, at *Weſtminſter* aforeſaid in the county aforeſaid, at the requeſt and coſts of the ſaid *A.*

Condition.

Breach.

Bail-bond aſſigned.

A. plaintiff in that ſuit, according to the form of the ſtatute in ſuch caſe made and provided, in due manner aſſigned to the ſaid *A.* the ſaid writing obligatory, and atteſting the ſame under the hand and ſeal of office of the ſaid late ſheriff of the ſaid county of *Middleſex*, in the preſence of two credible witneſſes, as by the ſaid aſſignment indorſed on the ſaid writing obligatory, and duly ſtampt before the exhibiting of the bill of the ſaid *A.* and to the ſaid court of our ſaid lord the king, before the king himſelf here now ſhewn, the date whereof is the ſaid twenty-ſixth day of *April* in the year of our Lord one thouſand ſeven hundred and fifty-ſeven aforeſaid, more fully appears; by reaſon of which ſaid premiſſes, and by force of the ſtatute in ſuch caſe made and provided, an action hath accrued to the ſaid *A.* as aſſignee of the aforeſaid ſheriff of the ſaid county of *Middleſex*, to demand and have of the ſaid *C. D.* the aforeſaid thirty-ſix pounds: *Yet* the ſaid *C. D.* (although often requeſted, *&c.*) hath not paid the ſaid thirty-ſix pounds, or any part thereof, to the ſaid ſheriff before the ſaid aſſignment, or to the ſaid *A.* ſince the ſaid aſſignment, but hath hitherto wholly refuſed to pay the ſame to the ſaid late ſheriff, or to the ſaid *A.* and ſtill doth refuſe to pay the ſame to the ſaid *A.* to the damage of the ſaid *A.* of twenty pounds; and therefore brings his ſuit, *&c.*

Pledges to proſecute { *John Doe*, and *Richard Roe.*

Mid-

B. R. Debt on a bail-bond by the aſſignee of the ſheriff against one of the bail.
Lill Ent. 173. Pract. Reg. 172.
Bill of Middleſex ſued out.

Middleſex, *to wit.* *J. W.* aſſignee of Sir *R. B.* knt. and Sir *R. K.* knt. ſheriff of the county of *Middleſex* aforeſaid, according to the form of the ſtatute in ſuch caſe lately made and provided, complains of *J. J.* otherwiſe called, *&c.* being in the cuſtody of the marſhal, *&c.* of a plea, that he render to him forty pounds of lawful money of *Great Britain*, which he owes him and unjuſtly detains; for that, to wit, That *whereas* after the firſt day of *Trinity* term in the year of our Lord one thouſand ſeven hundred and ſix, to wit, * on the twentieth day of *May* in the year of our Lord one thouſand ſeven hundred and fifteen, the ſaid *J. W.* proſecuted out of the court of our ſaid lord the king, before the king himſelf, (the ſaid court then being at *Weſtminſter* in the county of *Middleſex*, aforeſaid) a precept of our ſaid lord the king, commonly called a bill of *Middleſex*, directed to the ſheriff of the ſaid county of *Middleſex*, by which it was commanded to the ſaid ſheriff, that he ſhould take one *P. B.* the younger, if he ſhould be found in his bailiwic, and keep him ſafely, ſo that he ſhould have his body before our ſaid lord the king at *Weſtminſter* on *Monday* next after the morrow of *All Souls*, to anſwer the ſaid *J. W.* of a plea of treſpaſs, and alſo to a bill of the ſaid *J. W.* againſt the ſaid *P. B.* for twenty pounds of

* *Vide* 2 R. Raym. 1557. *If on a day in the vacation, bad. Vide* Andr. 374.

debt,

debt, according to the cuſtom of the court of our ſaid lord the king, before the king himſelf, to be exhibited, which ſaid precept afterwards, and before the return of the ſame, to wit, on the ſaid twentieth day of *May* in the year of our Lord one thouſand ſeven hundred and fifteen aforeſaid, at the pariſh of *St. Clement Danes* in the county of *Middleſex* aforeſaid, was delivered to the ſaid Sir *R. B.* knt. and Sir *B. K.* knt. then being ſheriff of the ſaid county of *Middleſex*, to be executed in due form of law: By virtue of which ſaid precept, directed to the ſheriff of the ſaid county of *Middleſex* in form aforeſaid, the ſaid Sir *R. B.* knt. and Sir *R. K.* knt. then being ſheriff of the ſaid county of *Middleſex* as aforeſaid, afterwards, to wit, on the ſaid twentieth day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and fifteen, took and arreſted the ſaid *P. B.* at the pariſh aforeſaid in the county aforeſaid, and had, detained and kept the ſaid *P.* then and there in his cuſtody by virtue of the ſaid precept and that arreſt: *And whereas* the ſaid *J. J.* afterwards, to wit, on the twenty-eighth day of *May* in the year of our Lord one thouſand ſeven hundred and fifteen aforeſaid, at the pariſh aforeſaid in the county aforeſaid, the ſaid *P. B.* being ſo taken, arreſted, detained and kept by the ſaid ſheriff of the ſaid county of *Middleſex* as aforeſaid, and then at the pariſh aforeſaid in the county aforeſaid remaining in the cuſtody of the ſaid ſheriff by virtue of the ſaid precept aforeſaid, by his writing obligatory, ſealed with the ſeal of the ſaid *J. J.* and

Delivered to the ſheriff.

Defendant arreſted thereon.

Bail-bond given.

Profert. and to the court of our ſaid lord the now king here ſhewn, the date of which ſaid writing obligatory is on the ſame twenty-eighth day of *May* in the year of our Lord one thouſand ſeven hundred and fifteen aforeſaid, *acknowledged himſelf* to be held and firmly bound to the ſaid Sir *R. B.* knt. and Sir *R. K.* knt. then being ſheriff of the ſaid county of *Middleſex* as aforeſaid, by the name of Sir *R. B.* knt. and Sir *R. K.* knt. ſheriff of the county aforeſaid, in the ſaid forty pounds, to be paid to the ſaid ſheriff or his certain attorney, executors, adminiſtrators or aſſigns, when he ſhould be thereunto afterwards required:

Condition. With a condition to the ſaid writing obligatory underwritten, that if the ſaid *P. B.* ſhould appear before our ſaid lord the king at *Weſtminſter*, on the ſaid *Monday* next after the morrow of the aſcenſion of our Lord, to anſwer the ſaid *J. W.* of a plea of treſpaſs, and alſo to a bill as aforeſaid, for twenty pounds of debt, then the ſaid writing obligatory to be void and of no force, otherwiſe to ſtand and remain in its full force and effect: *And whereas* the ſaid *P. B.* did not appear before our ſaid lord the king at *Weſtminſter* on the ſaid *Monday* next after the morrow of the Aſcenſion of our Lord in the ſaid condition mentioned, according to the form and effect of that condition, whereby the ſaid writing obligatory became forfeited: *And whereas* afterwards, to wit, on the eleventh day of *June* in the year of our Lord one thouſand ſeven hundred and fifteen aforeſaid, at the pariſh aforeſaid in the county aforeſaid, at the requeſt

Breach in non-appearance.

Bail-bond aſſigned to plaintiff.

queſt and charges of the ſaid *J. W.* the ſaid Sir *R. B.* knt. and Sir *R. K.* knt. ſheriff of the county of *Middleſex* aforeſaid, by the name of Sir *R. B.* knt. and Sir *R. K.* knt. ſheriff of the county aforeſaid, aſſigned to the ſaid *J. W.* the ſaid writing obligatory ſo made for the appearance of the ſaid *P. B.* as aforeſaid, by indorſing the aſſignment of the ſaid ſheriff of the ſaid writing obligatory upon the ſaid writing obligatory, and by then and there atteſting the ſaid aſſignment under the hand and ſeal of the ſaid ſheriff, * in the preſence of two credible witneſſes, according to the form of the ſtatute in ſuch caſe lately made and provided; which ſaid aſſignment (the date whereof is on the ſame eleventh day of *June* in the year of our Lord one thouſand ſeven hundred and fifteen aforeſaid) is alſo to the court of our ſaid lord the now king here ſhewn; by reaſon of which ſaid premiſſes,

Profert of the aſſignment.

Actio accrevit quer'.

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* Debt on a bail-bond, judgment by *nil dicit*, error aſſigned for that only, alledged, that ſheriff at requeſt and coſts of plaintiff, according to the form of the ſtatute, *&c.* aſſigned the bond to him, and did not ſhew that ſheriff aſſigned the bond to plaintiff, by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two or more credible witneſſes, according to ſtat. 4 *An. c.* 16. *ſ.* 20. *ſed non allocatur*; all defects which would have been aided by a verdict being aided after judgment by *nil dicit*, by ſtat. 4 *Ann. c.* 16. *ſ.* 2. And it being alledged, that the ſaid bond was aſſigned *ſecundum formam ſtat.* judgment affirmed. *Mich.* 3 *Geo.* 2. *B. R. Mifflin* v. *Morgan*, 2 *R. Raym.* 1564. Vide *Carth.* 304.

according to the form of the ſtatute in that behalf made and provided, an action has accrued to the ſaid *J. W.* as aſſignee of the ſaid Sir *R. B.* knt. and Sir *R. K.* knt. ſheriff of the ſaid county of *Middleſex* as aforeſaid, to demand and have of the ſaid *J. J.* the ſaid forty pounds: *Yet* the ſaid *J. J.* although often required, *&c.* has not yet paid the ſaid forty pounds to the ſaid *J. W.* or to the ſaid Sir *R. B.* and Sir *R. K.* or to any one of them, but has hitherto intirely refuſed to pay the ſame to the ſaid *J. W.* or to the ſaid Sir *R. B.* and Sir *R. K.* or to any one of them, and ſtill refuſes to pay the ſame to the ſaid *J. W.* to the damage of the ſaid *J. W.* of ten pounds; and thereupon he brings ſuit, *&c.*

Breach of payment.

B. R. Debt on a bail-bond by two aſſignees of the ſheriff againſt one of the bail. Lill. Ent. 175. Pract. Reg. 172.

Northampton, *to wit.* *E. P.* widow, and *J. T.* aſſignees of Sir *F. St. J.* now bart. late *F. St. J.* eſq; late ſheriff of the county aforeſaid, according to the form of the ſtatute in ſuch caſe lately made and provided, complain of *J. B.* otherwiſe called, *&c.* being in the cuſtody of the marſhal, *&c.* of a plea, that he render to them one thouſand and ſixty pounds of lawful money of *Great Britain*, which he owes them and unjuſtly detains; *For that*, to wit, That whereas one *R. T.* the younger, after the firſt day of *Trinity* term in the year of our Lord one thouſand ſeven hundred and ſix, to wit, on the twenty-ſecond day of *July* in the year of our Lord one thouſand ſeven hundred and fifteen, at *Oundle* in the county aforeſaid, by the ſaid *F. St. J.* then ſheriff of the county aforeſaid

Principal arreſted on a latitat.

aforeſaid, was arreſted at the ſuit of them the ſaid *E.* and *J.* by virtue of a certain writ of our lord the king called a *latitat*, proſecuted out of the court of our ſaid lord the king before the king himſelf, the ſaid court being then at *Weſtminſter* in the county of *Middleſex*, by the ſaid *E.* and *J.* againſt the ſaid *R. T.* the younger, in a plea of treſpaſs, and to a bill of the ſaid *E.* and *J.* for eight hundred pounds upon promiſe, according to the cuſtom, *&c.* returnable in the ſame court on † *Monday* next after three weeks of *St. Michael* then next enſuing: *And whereas* the ſaid *F. St. J.* being then ſheriff of the ſaid county of *Northampton* as aforeſaid, of and upon that arreſt took bail for the ſaid *R. T.* the younger, to wit, the ſaid *R. T.* the younger, and the ſaid *J. B.* and one *R. T.* which ſaid *R. T.* the younger, *J. B.* and *R. T.* on the ſaid twenty-ſecond day of *July* in the year of our Lord aforeſaid, at *Oundle* aforeſaid in the county aforeſaid, *by a writing obligatory*, *which*, ſealed as well with the ſeal of the ſaid *J. B.* as with the ſeals of the ſaid *R. T.* the younger and *R. T.* the ſaid *E.* and *J.* bring here into court, the date whereof is on the ſame day and year laſt aforeſaid; by which ſaid writing the ſaid *J. B. acknowledged himſelf* to be held and firmly bound to the ſaid *F. St. J.* then being ſheriff of the ſaid county as aforeſaid, by the name of *F. St. J.* eſq; ſheriff of the county of *Northampton*, in the ſaid one thouſand and

Bail-bond given.

Profert.

† No ſuch return at this day. See *Vol.* 1. *p* —.

ſixty

ſixty pounds, to be paid to the ſaid ſheriff or his aſſigns when he the ſaid *J. B.* ſhould be thereunto required: With a condition to the ſaid writing obligatory underwritten, that if the ſaid *R. T.* the younger ſhould appear before our ſaid lord the king at *Weſtminſter* on the ſaid **Monday* next after three weeks of *St. Michael*, to anſwer to the ſaid *E. P.* widow, and *J. T.* of a plea of treſpaſs, and alſo to a bill of the ſaid *E.* and *J.* againſt the ſaid *R. T.* the younger, for eight hundred pounds upon promiſe, according to the cuſtom of the court of our lord the king, that then the ſaid obligation ſhould be void and of no effect, otherwiſe it ſhould ſtand and remain in full force, ſtrength and effect, as by the ſaid writing obligatory and the condition thereof more fully appears: *And whereas* the ſaid eight hundred pounds being then unpaid, afterwards, to wit, on the third day of *March* in the year of our Lord aforeſaid, at *Oundle* aforeſaid in the county aforeſaid, at the requeſt and charges of the ſaid *E.* and *J.* plaintiffs in that ſuit, the ſaid *F. St. J.* by the name of Sir *F. St. J.* bart. late ſheriff of the county of *Northampton* aforeſaid, by his indorſement upon the ſaid writing obligatory, under the hand and ſeal of the ſaid late ſheriff, made and atteſted in the preſence of *E. H.* and *T. E.* two credible witneſſes, *which*, ſealed with the ſeal of the office of the ſaid *F. St. J.* the ſaid *E.* and *J.* bring here into court, the date where-

Condition.

Bail-bond aſſigned.

Profert of the indorſement.

* No ſuch return now.

of

of is on the ſame day and year laſt mentioned, aſſigned to the ſaid *E.* and *J.* the ſaid writing obligatory, according to the form of the ſtatute in ſuch caſe lately made and provided, of which premiſſes the ſaid *J. B.* afterwards, to wit, on the ſame day and year, and at the place laſt aboveſaid had notice: *And* the ſaid *E.* and *J.* in fact ſay, that the ſaid *R. T.* the younger did not appear before our ſaid lord the king at *Weſtminſter* on the ſaid *Monday* next after three weeks of *St. Michael* in the ſaid condition mentioned, according to the form of that condition, whereby the ſaid writing obligatory became forfeited; by reaſon of which premiſſes, and by force, and according to the form of the ſaid ſtatute in ſuch caſe lately made and provided, an action accrued to the ſaid *E.* and *J.* as aſſignees of the ſaid *F. St. J.* late ſheriff of the county of *Northampton* aforeſaid, to demand and have of the ſaid *J. B.* the ſaid one thouſand and ſixty pounds: *Yet* the ſaid *J. B.* although often required, *&c.* has not yet paid the ſaid one thouſand and ſixty pounds to the ſaid *E.* and *J.* but has hitherto intirely refuſed, and ſtill doth refuſe to pay them the ſame, to the damage of the ſaid *E.* and *J.* of twenty pounds; and thereupon they bring ſuit, *&c.*

Averment that the principal defendant did not appear.

Per quod actio accrevit.

Northampton, to wit. *E. P.* widow, and *J. T.* aſſignees, *&c.* complain of *R. T.* the younger, otherwiſe called, *&c.* being in the cuſtody of the marſhal, *&c.* of a plea, that he render to them one thouſand and ſixty pounds of lawful money of *Great Britain,*

B. R. Debt on a bail-bond by two aſſignees of the ſheriff againſt the principal defendant. Lill. Ent. 176.

Defendant arrested on a latitat.

tain, which he owes them and unjuſtly detains; *For that*, to wit, That whereas the ſaid *R.* after the firſt day of *Trinity* term in the year of our Lord one thouſand ſeven hundred and ſix, to wit, on the twenty-ſecond day of *July* in the year of our Lord one thouſand ſeven hundred and fifteen, at *Oundle* in the county aforeſaid, was arreſted by the ſaid *F. St. J.* then ſheriff of the county aforeſaid, at the ſuit of the ſaid *E.* and *J.* by virtue of a certain writ of our ſaid lord the king, called a *latitat*, proſecuted out of the court of our ſaid lord the now king, before the king himſelf, the ſaid court then being at *Weſtminſter* in the county of *Middleſex*, by the ſaid *E.* and *J.* againſt the ſaid *R.* in a plea of treſpaſs, and alſo to a bill of the ſaid *E.* and *J.* for eight hundred pounds upon promiſe, according to the cuſtom, *&c.* returnable in the ſame court of our ſaid lord the king on * *Monday* next after three weeks of *St. Michael* then next following: *And whereas* the ſaid *F. St. J.* then being ſheriff of the ſaid county as aforeſaid, of and upon that arreſt took bail for the ſaid *R. T.* the younger, to wit, the ſaid *R. T.* the younger, and *J. B.* and *R. T.* which ſaid *R. T.* the younger, *J. B.* and *R. T.* on the ſaid twenty-ſecond day of *July* in the year aboveſaid, at *Oundle* aforeſaid in the county aforeſaid, *by their writing obligatory*, *which*, ſealed as well with the ſeal of the ſaid *R. T.* the younger, as with the ſeals of

Bail-bond given.

Profert of the bond.

* See before.

the

the ſaid *J. B.* and *R. T.* the ſaid *E.* and *J.* bring here into court, the date whereof is on the day and year laſt aboveſaid, by which ſaid writing obligatory the ſaid *R. T.* the younger acknowledged himſelf to be held and firmly bound to the ſaid *F. St. J.* then being ſheriff of the ſaid county as aforeſaid, by the name of *F. St. J.* eſq; ſheriff of the county aforeſaid, in the ſaid one thouſand and ſixty pounds, to be paid to the ſaid ſheriff or his aſſigns, when he ſhould be thereunto required: With a condition to the ſaid writing obligatory underwritten, that if the ſaid *R. T.* the younger ſhould appear before our ſaid lord the king at *Weſtminſter* on the ſaid * *Monday* next after three weeks of *St. Michael*, to anſwer the ſaid *E. P.* widow, and *J. T.* of a plea of treſpaſs, and alſo to a bill of the ſaid *E.* and *J.* againſt the ſaid *R. T.* the younger, for eight hundred pounds upon promiſe, according to the cuſtom of the court of our lord the king, that then the ſaid obligation ſhould be void and of no force, otherwiſe to ſtand and remain in its full ſtrength, force and effect, as by the ſaid writing obligatory and the condition thereof more fully appears; *And whereas* afterwards, to wit, on the third day of *March* in the year of our Lord aforeſaid, at *Oundle* aforeſaid, in the county aforeſaid, the ſaid *F. St. J.* the ſaid eight hundred pounds being then unpaid him, at the requeſt

Condition.

Bail-bond aſſigned.

* See before.

and charges of the ſaid *E.* and *J.* plaintiffs in that ſuit, by the name of Sir *F. St. J.* bart. by his indorſement made upon the ſaid writing obligatory under the hand and ſeal of the ſaid late ſheriff, and atteſted in the preſence of *F. H.* and *T. E.* two credible witneſſes, *which*, ſealed with the ſeal of the office of the ſaid *F. St. J.* the ſaid *E.* and *J.* bring here into court, the date whereof is on the ſame day and year laſt mentioned, aſſigned to the ſaid *E.* and *J.* the ſaid writing obligatory, according to the form of the ſtatute in ſuch caſe lately made and provided, of which premiſſes the ſaid *R. T.* the younger, afterwards, to wit, on the ſame day and year, and at the place laſt mentioned, had notice; *And* the ſaid *E.* and *J.* in fact ſay, that the ſaid *R. T.* the younger did not appear before our ſaid lord the king at *Weſtminſter* on the ſaid *Monday* next after three weeks of *St. Michael* in the ſaid condition mentioned, according to the form of that condition, whereby the ſaid writing obligatory became forfeited; *by reaſon* of which premiſſes, and by force, and according to the form of the ſtatute in ſuch caſe lately made and provided, an action accrued to the ſaid *E.* and *J.* as aſſignees of the ſaid *F. St. J.* late ſheriff of the ſaid county of *Northampton*, to demand and have of the ſaid *R. T.* the younger the ſaid one thouſand and ſixty pounds; *Yet* the ſaid *R. T.* the younger, although often required, *&c.*

Profert of the aſſignment.

Averment that the defendant did not appear.

Pro quod actio accrevit.

Breach.

Eaſter

Eaſter *term in the tenth year of king* George *the third.*

Middleſex, *to wit.* T. D. aſſignee of Sir *W. R.* knt. and Sir *B R.* knt. ſheriff of the ſaid county of *Middleſex*, according to the form of the ſtatute in ſuch caſe lately made and provided, complains of *R. J.* otherwiſe called *R. J.* of the pariſh of *St. Martin in the Fields* in the county of *Middleſex*, gent. in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to him forty pounds of lawful money of *Great Britain*, which he owes him and unjuſtly detains; *For that*, to wit, that whereas the ſaid *T. D.* after the firſt day of *Trinity* term in the year of our Lord one thouſand ſeven hundred and ſix, to wit, on the twelfth day of *February* in the tenth year of the reign of our ſovereign lord *George* the third, now king of *Great Britain*, *&c.* at *Weſtminſter* in the ſaid county of *Middleſex*, ſued forth out of the court of our lord the king, before the king himſelf, (the ſaid court being then at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*) a certain precept of our ſaid lord the king, commonly called a bill of *Middleſex*, directed to the ſheriff of the ſaid county of *Middleſex*, by which it was commanded to the ſaid ſheriff, that he ſhould take one *O. B.* if he ſhould be found in his bailiwic, and

B. R. Debt on a bail-bond by the aſſignee of the ſheriff againſt one of the bail.

Bill of Middleſex ſued out.

ſafely keep him, ſo that he might have his body before our ſaid lord the king at *Weſtminſter*, on *Wedneſday* next after fifteen days from the day of *Eaſter*, to anſwer the ſaid *T. D.* in a plea of treſpaſs, and alſo to a bill of the ſaid *T. D.* againſt the ſaid *O. B.* for twenty pounds upon promiſe, according to the cuſtom of the court of our ſaid lord the king, before the king himſelf to be exhibited; and that he ſhould have there then that precept, which ſaid precept afterwards, and before the return thereof, to wit, on the twenty-ninth day of *March* in the ſaid tenth year of his preſent majeſty's reign, at *Weſtminſter* aforeſaid in the county aforeſaid, was delivered to the ſaid Sir *W. R.* knt. and Sir *B. R.* knt. then ſheriff of the ſaid county of *Middleſex*, to be executed in due form of law; by virtue of which ſaid precept, directed to the ſaid ſheriff of *Middleſex* in form aforeſaid, the ſaid Sir *W. R.* knt. and Sir *B. R.* knt. then and yet ſheriff of the ſaid county of *Middleſex*, afterwards, to wit, on the ſaid twenty-ninth day of *March* in the tenth year of his preſent majeſty's reign, at *Weſtminſter* aforeſaid in the county aforeſaid, took and arreſted the ſaid *O. B.* and held and kept the ſaid *O.* then and there in his cuſtody by virtue of the ſaid precept and arreſt; *And alſo*, whereas afterwards, to wit, on the ſecond day of *April* in the tenth year of his preſent majeſty's reign, at *Weſtminſter* aforeſaid in the county aforeſaid, the ſaid *O. B.* being ſo taken, arreſted, detained and kept by the ſaid ſheriff of

Delivered to the ſheriff.

Defendant arreſted.

Bail-bond given.

of *Middleſex* as aforeſaid, and then at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex* remaining in cuſtody of the ſaid ſheriff, by virtue of the ſaid precept, the ſaid *R. J.* by his writing obligatory, ſealed with his ſeal, *And* to the court of our ſaid lord the king now here ſhewn, the date of which ſaid writing obligatory is the day and year laſt aforeſaid, acknowledged himſelf to be held and firmly bound to the ſaid Sir *W. R.* knt. and Sir *B. R.* knt. then ſheriff of the ſaid county of *Middleſex* as aforeſaid, by the name of Sir *W. R.* knt. and Sir *B. R.* knt. ſheriff of the county of *Middleſex* aforeſaid, in the ſum of forty pounds of lawful money of *Great Britain*, to be paid to the ſaid ſheriff or his certain attorney, his executors, adminiſtrators or aſſigns, when he ſhould be thereunto required, with a condition to the ſaid writing obligatory underwritten, that if the ſaid *O. B.* ſhould appear before our lord the king at *Weſtminſter* on the ſaid *Wedneſday* next after fifteen days from the day of *Eaſter*, to anſwer the ſaid *T. D.* in a plea of treſpaſs, and alſo to a bill as aforeſaid, for twenty pounds upon promiſe, that then the ſaid obligation ſhould be void, or elſe to remain in full force and virtue; which ſaid writing obligatory, with the condition there underwritten, was taken by the ſaid ſheriff by virtue of the ſaid precept, and by force of the ſtatute in ſuch caſe lately made and provided: *And whereas* the ſaid *O. B.* did not appear before our ſaid lord the king at *Weſtminſter* on the ſaid *Wedneſday* next after fifteen days from the day of *Eaſter*, in the

Profert.

Condition.

Default made.

condition aforeſaid mentioned, according to the form and effect of that condition; by which the ſaid writing obligatory became forfeited; *And whereas* afterwards, to wit, on the fourth day of *May* in the year laſt mentioned, at *Weſtminſter* aforeſaid in the ſaid county of *Middleſex*, the ſaid writing obligatory being ſo forfeited, and the money therein mentioned, or any part thereof, not being paid, the ſaid Sir *W. R.* knt. and Sir *B. R.* knt. ſheriff of the ſaid county of *Middleſex*, by the name of Sir *W. R.* knt. and Sir *B. R.* knt. ſheriff of the ſaid county of *Middleſex*, at the requeſt and charges of the ſaid *T. D.* aſſigned to the ſaid *T. D.* the ſaid writing obligatory ſo as aforeſaid made, for the appearance of the ſaid *O. B.* by indorſing the ſaid aſſignment on the ſaid writing obligatory, and by then and there atteſting the ſaid aſſignment under his hand and ſeal, in the preſence of two credible witneſſes, to wit,

and according to the form of the ſtatute in ſuch caſe made and provided; which ſaid aſſignment (the date of which is the ſaid fourth day of *May* in the year laſt aforeſaid) is alſo to the ſaid court of our ſaid lord the king now here ſhewn; by reaſon of which ſaid premiſſes, according to the form of the ſtatute in that caſe made and provided, an action hath accrued to the ſaid *T. D.* as aſſignee of the ſaid Sir *W. R.* knt. and Sir *B. R.* knt. ſheriff of the ſaid county of *Middleſex* as aforeſaid, to demand and have of the ſaid *R. J.* the ſaid ſum of forty pounds: Nevertheleſs the ſaid *R. J.* although often required,

Bond forfeited.

Aſſignment of bail-bond.

Profert of aſſignment.

Actio accrevit.

quired, &c. hath not yet paid the ſaid forty pounds of the ſaid *T. D.* but has hitherto refuſed, and ſtill doth refuſe to pay the ſame to the ſaid *T. D.* to the damage of the ſaid *T. D.* of ten pounds: And thereupon he brings ſuit, &c.

——— for the plaintiff.
——— for the defendant.

Pledges for proſecuting { *John Doe*, and *Richard Roe*.

Hilary *term in the year of*, &c.

Middleſex, *to wit*. BE *it remembered*, That on *Friday* next after the octave of *St. Hilary* in this ſame term, before our lord the king at *Weſtminſter* came *A. B.* eſq; and *C.* his wife, by *H. A.* their attorney, and brought into the court of our ſaid lord the king then there, their bill againſt *D. E.* eſq; otherwiſe called *D. E.* of, &c. eſq; being in the cuſtody of the marſhal of the *Marſhalſea* of our ſaid lord the king, before the king himſelf, of a plea of debt; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words; *Middleſex*, to wit, *A. B.* eſq; and *C.* his wife, complain of *D. E.* eſq; otherwiſe called *D. E.* of, &c. eſq; being in the cuſtody of the marſhal

Memorandum of the ſame term with declaration.

Debt by baron and feme, on a bond to feme while ſole.

marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea, that he render to them five hundred pounds, lawful money of *Great Britain*, which he owes them and unjuſtly detains; for that the ſaid *D. E.* on the fourteenth day of *May* in the year of our Lord one thouſand ſeven hundred and thirty-four, at *Weſtminſter* in the county of *Middleſex* aforeſaid by his certain writing obligatory, ſealed with the ſeal of him the ſaid *D. E.* *And* to the court of our ſaid lord the king now here ſhewn, the date whereof is on the ſame day and year acknowledged himſelf to be held and firmly bound unto the ſaid *C.* whilſt ſole, by the name of *C. L.* of the pariſh of in the county of ſpinſter, in the ſaid five hundred pounds, to be paid unto her the ſaid *C.* when he ſhould be thereunto required; yet the ſaid *D. E.* (although by the ſaid *C.* whilſt ſole, and after her intermarriage with the ſaid *A. B.* by them the ſaid *A. B.* and *C.* often required, *&c.*) the ſaid five hundred pounds unto the ſaid *C.* whilſt ſole, or after her intermarriage with the ſaid *A. B.* unto them the ſaid *A. B.* and *G.* or either of them, hath not yet paid, but hath hitherto abſolutely refuſed, and ſtill doth refuſe to pay the ſame; wherefore they the ſaid *A. B.* and *C.* ſay that they are injured, and have damage to the value of twenty pounds: And thereupon they bring their ſuit, *&c.*

Profert.

And the ſaid *D. E.* by *T. M.* his attorney, comes and defends the force and injury when, *&c.*

&c. and prays oyer of the ſaid writing; and it is read to him in theſe words: Know all men, &c. and he alſo prays oyer of the condition of the ſaid writing; and it is likewiſe read to him in theſe words, to wit, The condition of this obligation is ſuch, &c. which being read and heard, he the ſaid *D. E.* ſaith, that the ſaid *A. B.* and *C.* his wife ought not to have their ſaid action againſt him, becauſe he ſaith, that he the ſaid *D. E.* on the ſaid fourteenth day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and fourteen, at *Weſtminſter* aforeſaid, did make, ſeal, and as his act and deed deliver unto the ſaid *C.* when ſole, the writing herein before mentioned and ſet forth: But he the ſaid *D. E.* ſaith, that the condition thereof, at the time of the ſealing and delivery of the ſame by him the ſaid *D. E.* was, and was thereunto ſubſcribed in the words and figures following, to wit, The condition of this obligation is ſuch, that if the above-bounden *D. E.* his heirs, executors or adminiſtrators, do well and truly pay, or cauſe to be paid, unto the above-named *C.* the annuity of one and twenty pounds of lawful money of *Great Britain*, by quarterly payments, on the four moſt uſual feaſts or quarter days in the year, that is to ſay, *Michaelmas* day, *Chriſtmas* day, *Lady* day, and *Midſummer* day; the firſt payment thereof to be made on the nine and twentieth day of *September* now next enſuing the date of theſe preſents, or within fourteen days after; then this obligation to be void, or elſe to remain in full force and virtue: And

Oyer prayed.

Plea, that an interlineation was made after executing; Et ſic non eſt factum.

And the ſaid *D. E.* further ſaith, that after the ſealing and delivering of the ſaid writing by him the ſaid *D. E.* with that ſame condition as aforeſaid thereunto ſubſcribed, to wit, the ſaid fourteenth day of *May* in the ſaid year of our Lord one thouſand ſeven hundred and thirty-four, at *Weſtminſter* aforeſaid, he the ſaid *D. E.* at the requeſt of the ſaid *C.* did interline in that ſame condition between the word *(Britain)* and the word (by) theſe words following, to wit, (yearly and every year during the natural life of the ſaid *C.*) as theſe words ſtand and appear in the ſaid condition, of which oyer is above given; and ſo he the ſaid *D. E.* ſaith, that the aforeſaid writing, with the above mentioned condition, of which oyer is above given; is not the deed of him the ſaid *D. E.* And of this he puts himſelf upon the country.

B. R. Debt on a leaſe for years againſt the executor of the leſſee, for rent due in teſtator's time, and alſo in the executor's time. Lill. Ent. 148. Leaſe.

London, *to wit.* *T. G.* merchant, complains of *R. F.* goldſmith, executor of the teſtament and laſt will of Sir *T. F.* knt. deceaſed, being in the cuſtody of the marſhal of the *Marſhalſea* of our lord *William* and lady *Mary*, now king and queen of *England*, *&c.* before the ſaid king and queen, of a plea, that he render to him one hundred twenty and three pounds and fifteen ſhillings, which he unjuſtly detains from him; for that, to wit, *That whereas* by a certain indenture made on the thirteenth day of *March* in the year of our Lord one thouſand ſix hundred and eighty eight at *London* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, between

between the ſaid *T. G.* by the name of *T. G.* of *London*, merchant, of the one part, and the ſaid Sir *T. F.* by the name of Sir *T. F.* of *London*, knt. of the other part; *one part* of which, ſealed with the ſeal of the ſaid Sir *T. F.* in his life-time, and delivered as his deed, the ſaid *T. G.* brings here into court, the date whereof is on the ſame day and year, *reciting*, That whereas by a certain indenture, bearing date on the tenth day of *January* in the year of our Lord one thouſand ſix hundred and ſeventy-one, and in the twenty-third year of the reign of his late majeſty *Charles* the ſecond, late king of *England*, *&c.* made or mentioned to be made between the ſaid *T. G.* and *E.* his wife, *F. S.* of *Diggeſwell* in the county of *Hertford*, eſq; and *H. S.* citizen and merchant-taylor of *London*, of the one part, and the ſaid Sir *T. F.* by the name of *T. F.* of *London*, goldſmith, of the other part; It was agreed that the ſaid *T. G.* and *E.* his wife, *F. S.* and *H. S.* before the end of the term of *St. Hilary* then next enſuing the date of the ſaid indenture, ſhould levy and acknowledge before the juſtices of the common bench of the ſaid late king at *Weſtminſter*, to the ſaid *T. F.* and his heirs one fine *ſur conuſance de droit come ceo*, *&c.* with proclamations, of all that meſſuage or tenement ſituate in *Fleet-ſtreet* between the *Inner Temple Gate* and the *Middle Temple Gate*, in the pariſh of *St. Dunſtan in the Weſt* in the city of *London*, then in the occupation of *R. C.* or his aſſigns or under-tenants; and of all that meſſuage or tenement ſituate in *Fleet-ſtreet* aforeſaid in the city of *London*, next

Profert.

Reciting.

Fine to be levied.

next adjoining to the aforeſaid meſſuage, and then or late in the tenure or occupation of *J. G.* or his aſſignee or aſſigns, together with all and ſingular their appurtenances thereunto belonging, or in any manner appertaining; and of all other the meſſuages and tenements of the ſaid *T.* and *E. G.* or of either of them, ſituate and being in the pariſh of *St. Dunſtan* in the city of *London*, by ſuch name or names, additions or deſcriptions, to aſcertain the ſame as ſhall be thought fit: And by the ſaid indenture it was declared, that the ſaid fine, ſo or in any other manner to be had or levied, ſhould be and enure to the uſe of the ſaid *T. G.* for his life, and after his deceaſe to the uſe of the ſaid *E.* wife of the ſaid *T. G.* for her life; and after the death of the ſaid *T. G.* and *E.* his wife, then to the ſeveral other uſes in the ſaid indenture mentioned and declared, under and with the proviſo following, to wit, Provided always and it was agreed by and between the ſaid parties to the ſaid indenture, and by them declared and agreed to be their intention and meaning, that it ſhould be lawful to and for the ſaid *T. G.* at any time or times during his natural life, and alſo for the ſaid *E.* after the deceaſe of the ſaid *T. G.* to make or grant any leaſe or leaſes of the premiſſes, or of any part thereof, by indenture for any term or terms of years, either in poſſeſſion or reverſion, ſo that there ſhould be reſerved and made payable, for ſuch of the ſaid meſſuages, as ſhould be ſo leaſed during the whole of ſuch terms reſpectively, as ſhall be ſo granted or made, ſo much yearly rent reſpectively,

Uſes of the fine.

Power to make leaſes.

reſpectively, as ſuch reſpective meſſuage or tenement which ſhall be ſo demiſed had been let for the major part of ten years then laſt paſt, and ſo that the term of years in any new leaſe of the premiſſes, and the term of years then to come of all or any of the term or terms of years of the ſame, before ſuch new leaſe in being, ſhould not exceed in the whole twenty-one years, as by the ſaid recited indenture and fine which was accordingly levied of the ſaid meſſuages and premiſſes, relation being thereunto had, would more at large appear: And whereas the ſaid *T. F.* then had a leaſe of the ſaid firſt mentioned meſſuage at the yearly rent of forty pounds, which ſaid leaſe would be expired on the ſecond day of *May* which would be in the year of our Lord one thouſand ſix hundred and ninety-one; *It was witneſſed*, that the ſaid *T. G.* for and in conſideration of a ſurrender of the ſaid recited indenture, and in proſecution and by virtue of the ſaid recited proviſo, and of the power and authority thereby reſerved to the ſaid *T. G.* and in conſideration of the ſum of five hundred pounds of lawful money of *England* to the ſaid *T. G.* in hand paid at or before the ſealing of the ſaid indenture by the ſaid Sir *T. F.* for and in the name of a fine or income, the receipt whereof he the ſaid *T. G.* by the ſaid indenture acknowledged, and thereof acquitted and diſcharged the ſaid Sir *T. F.* his executors, adminiſtrators and aſſigns, by the ſaid indenture; one hundred and fifty pounds, part of which ſaid five hundred pounds had been laid out by the ſaid

Q. Ill in debt.

T. G. in building and improving the ſaid firſt meſſuage then in the tenure or occupation of the ſaid Sir *T. F.* and for the advance and increaſe of the rent thereof; and in conſideration of the rents, covenants, proviſoes and agreements in the ſaid indenture afterwards reſerved and mentioned on the part and behalf of the ſaid Sir *T. F.* his executors, adminiſtrators and aſſigns, to be paid, done and performed, the ſaid *T. G. had* demiſed, granted and to farm let, and by the ſaid indenture *did* demiſe, grant, and to farm let to the ſaid Sir *T. F.* his executors, adminiſtrators and aſſigns, *all that* meſſuage or tenement, with the ſhops, cellars, ſollars, yards, chambers, rooms and garrets thereunto belonging, then in the tenure or occupation of the ſaid Sir *T. F.* or his under-tenants or aſſigns, ſituate and being in *Fleet-ſtreet* aforeſaid between the *Inner Temple Gate* and the *Middle Temple Gate*, in the pariſh of *St. Dunſtan in the Weſt* in the city of *London* aforeſaid, and all lights, eaſements and profits, water-courſes, commodities and appurtenances whatſoever, to the ſaid demiſed meſſuage and premiſſes then belonging (except and always reſerved, *&c.*) And by the ſaid indenture it was declared and agreed, that all drains, gutters, pipes, currents, water-courſes and paſſages of and for water, and privileges of eves-droppings, and all caſements, lights, windows, and other privileges and accomodations upon, in or by and through the ſaid meſſuage by the ſaid indenture demiſed, or any part thereof, which then were made, uſed, accuſtomed or appertaining to the

Leaſe.

Exception.

the ſaid meſſuage or tenement belonging to the ſaid *T. G.* late in the occupation of the ſaid *J. G.* and then in the occupation of *W. O.* joining in the ſaid demiſed premiſſes, ſhould remain, continue; be held and enjoyed therewith during the term by the indenture under granted, in ſuch ſort as the ſame were then uſed, held and enjoyed; *to have and to hold* the ſaid demiſed meſſuage or tenement, and premiſſes, with the appurtenances, and every part and parcel thereof (except as is before excepted) to the ſaid Sir *T. F.* his executors, adminiſtrators and aſſigns, from the ſecond day of *November* then laſt paſt before the date of the ſaid indenture, for and during, and unto the full end and term of twenty years, and one half of a year thence next enſuing, fully to be compleated and ended; *Yielding and paying* therefore to the ſaid *T. G.* and his aſſigns, yearly and every year, and from time to time during the ſaid term of twenty years, and one half of a year, by the ſaid indenture granted, if the ſaid *T. G.* ſhould live ſo long, and after his deceaſe then to ſuch perſon or perſons, to whom the next uſe or eſtate of and in the ſaid demiſed meſſuage or tenement and premiſſes appertained, according to the limitation of the reſpective uſes and eſtates in and by the ſaid recited indenture limited, the yearly rent or ſum of fifty and five pounds of lawful money of *England*, at four ſeveral days of payment in every year, to wit, on the ſecond day of *February*, the ſecond day of *May*, the ſecond day of *Auguſt*, and the ſecond day of *November*, by equal and even portions, as

For twenty years and a half.

Reddendum.

by the ſaid indenture brought here into court, relation being thereunto had, amongſt other things more fully appears; *By virtue* of which ſaid leaſe the ſaid Sir *T. F.* in his life-time entered into the ſaid meſſuage with the appurtenances, and was thereof poſſeſſed, and held and enjoyed the ſaid meſſuage with the appurtenances, from the ſaid ſecond day of *November* in the ſaid year of our Lord one thouſand ſix hundred and eighty-eight, until the ſecond day of *November* in the year of our Lord one thouſand ſix hundred and ninety; and afterwards the ſaid Sir *T. F.* knt. on the eleventh day of *November* in the year laſt aforeſaid died, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid; *And* one hundred and ten pounds of the aforeſaid rent (parcel of the ſaid one hundred and twenty and three pounds and fifteen ſhillings) for two years, ended on the ſaid ſecond day in the ſaid year of our Lord one thouſand ſix hundred and ninety-two, were then in arrear and no ways ſatisfied, and ſtill remain unpaid to the ſaid *T. G.* whereby an action accrued to the ſaid *T. G.* to demand and have of the ſaid Sir *T. F.* in his life-time, and of the ſaid *R. F.* after the death of the ſaid Sir *T. F.* the ſaid one hundred and ten pounds, parcel of the ſaid one hundred and twenty and three pounds and fifteen ſhillings; *And* alſo thirteen pounds and fifteen ſhillings (reſidue of the ſaid one hundred twenty and three pounds and fifteen ſhillings) of the rent aforeſaid, after the death of the ſaid Sir *T. F.* for one quarter of a year, ended on the ſecond day of *February* in the year of our Lord one

Leſſee enters.

Dies.

Rent due in teſtator's life-time.

Rent due after his death.

one thouſand ſix hundred and ninety-two aforeſaid, were in arrear and no ways ſatisfied to the ſaid *T. G.* and ſtill remain unpaid; whereby an action hath accrued to the ſaid *T. G.* to demand and have of the ſaid *R. F.* the ſaid thirteen pounds and fifteen ſhillings (reſidue of the ſaid one hundred twenty and three pounds and fifteen ſhillings): *Yet* Breach.
the ſaid Sir *T. F.* in his life-time, and the ſaid *R.* after the death of the ſaid Sir *T. F.* although often required, *&c.* have not paid, nor has either of them paid, the ſaid one hundred and ten pounds, parcel of the ſaid one hundred twenty and three pounds and fifteen ſhillings, or any part thereof, to the ſaid *T. G.* nor has the ſaid *R.* paid the ſaid thirteen pounds and fifteen ſhillings, or any part thereof, to the ſaid *T. G.* but the ſaid *R.* has refuſed and ſtill does refuſe to pay the ſaid one hundred twenty and three pounds and fifteen ſhillings to the ſaid *T. G.* and unjuſtly detains the ſame, to the damage of the ſaid *T. G.* of ſixty pounds; and thereupon he brings ſuit, *&c.*

Hilary *term in the ninth year of king* George *the third.*

Middleſex, to wit. *T.* *T.* complains of *E. D.* in the cuſtody of the marſhal, *&c.* in a plea, that he render to the ſaid *T.* ten pounds, which he owes to him and unjuſtly detains, *&c.* for that *whereas* the ſaid *E.* after the firſt day of *May* in the year of our Lord Debt on a promiſſory note.

one thouſand ſeven hundred and five, to wit, on the twenty-ſecond day of *May* in the year of our Lord one thouſand ſeven hundred and ſixty-ſeven, at *Weſtminſter*, in the ſaid county, made his certain note in writing ſubſcribed with his own hand, commonly called a promiſſory note, bearing date the ſame day and year, by which note the ſaid *E.* promiſed to pay to the ſaid *T.* or his order, five pounds, ſix months after the date thereof, for value received by the ſaid *E.* and the ſaid *E.* did not pay to the ſaid *T.* the ſaid five pounds mentioned in the ſaid note, at the end of the ſaid ſix months therein mentioned: And the ſaid *T.* did not make any order of and concerning the payment of the ſaid five pounds; by reaſon of which an action has accrued to the ſaid *T.* to demand and have of the ſaid *E.* the ſaid five pounds, parcel of the ſaid ten pounds: *And whereas* the ſaid *E.* afterwards, to wit, on the firſt day of *March* in the year laſt mentioned, at *Weſtminſter* aforeſaid, borrowed of the ſaid *T.* five pounds, reſidue of the ſaid ten pounds, to be paid to the ſaid *T.* when he ſhould be requeſted to pay the ſame: *Neverthelefs* the ſaid *E.* (although often requeſted) hath not paid to the ſaid *T.* the ſaid ten pounds, or any part thereof, but hath hitherto denied, and ſtill doth deny to pay the ſame to the ſaid *T.* to the damage of the ſaid *T.* of ten pounds; and thereupon he brings ſuit, *&c.*

Debt for money borrowed.

Pledges, *&c.*

Mid-

Middleſex, to wit. *W.* *N.* complains of *J. B.* in the cuſtody of the marſhal, *&c.* of a plea, that he render to him 16 *l.* of lawful money of *Great Britain*, which he oweth him and unjuſtly detaineth, for that, to wit, That *whereas* the ſaid *J. B.* on the 26th day of *May* in the 11th year of the reign of our ſovereign lady *Anne* now queen of *Great Britain*, *&c.* at *W.* in the county aforeſaid, was indebted to the ſaid *W. N.* in the ſaid 16 *l.* for ſo much money after the firſt day of *May* in the year of our Lord 1711. had and received by the ſaid *J. B.* to the uſe of the ſaid *W. N.* whereby an action accrued to the ſaid *W. N.* to demand and have of the ſaid *J. B.* the ſaid 16 *l.* according to the form of the ſtatute made and provided in the parliament of our ſaid ſovereign lady the preſent queen, held at *W.* in the county of *M.* on the 25th day of *November* in the year of our Lord 1710, intitled, *An act for the better preventing of exceſſive and deceitful gaming*. *Yet* the ſaid *J.* although often requeſted, hath not yet rendered the ſaid 16 *l.* to the ſaid *W. N.* but hath hitherto refuſed, and ſtill doth refuſe to render the ſame to him. Wherefore he ſaith he is injured, and hath damage to the value of 20 *l.* and thereof he bringeth ſuit, *&c.*

Declaration in debt on the ſtatute 9 Ann. for preventing exceſſive and deceitful gaming. Andr. 67.

Nil debet *was pleaded, and the plaintiff recovered a verdict, and thereupon the money was paid.*

Eaſter *term* 29 *Geo.* 2.

Declaration in debt for 5 l. penalty on ſtat. 28 Geo. 2. c. 17. for preſervation of the public highways. B. R.

Warwickſhire, *to wit.* *J.* *G.* complaineth of *J. B.* in the cuſtody of the marſhal of the *Marſhalſea* of our Lord the king, before the king himſelf, of a plea, that he render to him five pounds of lawful money of *Great Britain*, which he oweth to him and unjuſtly detaineth, *&c.* for that whereas the ſaid *Thomas* on the 26th day of *April* in the year of our Lord 1756, at *Alceſter* in the ſaid county, was indebted to the ſaid *John* in the ſaid ſum of five pounds, being forfeited by an act, intitled, An act to amend an act made in the twenty-ſixth year of the reign of his preſent majeſty, intitled, *An act for the amendment and preſervation of the publick highways and turnpike roads of this kingdom, and for the more effectual execution of the laws relating thereto*; whereby an action hath accrued to the ſaid *John* to demand and have of the ſaid *Thomas* the ſaid five pounds above demanded: *Neverthelefs* the ſaid *Thomas*, although often required, hath not rendered to the ſaid *John* the ſaid five pounds, or any part thereof, but hath hitherto altogether refuſed and ſtill doth refuſe to render the ſame to him; whereupon the ſaid *John* ſaith, that he is injured and hath damage to the value of ten pounds; and therefore he bringeth this ſuit, *&c.*

W. for plaintiff { *pledges to* } *John Doe*, and *Richard Roe.*
for defendant { *proſecute* }

Mid-

Middleſex, to wit, *W. C.* complaineth of *C. S.* in the cuſtody of the marſhal, *&c.* of a plea, that he render to him 23 *l.* and 2 *d.* of lawful money of *England*, which he oweth him and unjuſtly detaineth; *for that*, to wit, that *whereas* the ſaid *W. C.* heretofore, to wit, in the term of *Eaſter* in the 4th year of the reign of our ſovereign lady *Anne* now queen of *England*, *&c.* in the court of our ſaid lady the queen, before the queen herſelf, the ſaid court then being at *W.* in the ſaid county of *M.* by the judgment of the ſaid court recovered againſt the ſaid *C.* by the name of *C. S.* 23 *l.* and 2 *d.* which in the ſaid court of our ſaid lady the queen, before the queen herſelf at *W.* aforeſaid in the ſaid county of *M.* were adjudged to the ſaid *W.* for his damages which he ſuſtained, as well by occaſion of a certain treſpaſs then lately done by the ſaid *C.* to the ſaid *W.* as for his coſts and charges by the ſaid *W.* about his ſuit in that behalf expended, whereof the ſaid *C.* is convicted, as by the record thereof remaining in the ſaid court of our ſaid lady the queen, before the queen herſelf at *W.* aforeſaid in the ſaid county of *M.* more fully appeareth: Which ſaid judgment ſtill remaineth in its full force and effect, no ways ſatisfied or reverſed; and the ſaid *W.* hath not yet ſued out his execution of the ſaid judgment recovered in form aforeſaid; *whereby* an action hath accrued to the ſaid *W.* to have and demand of the ſaid *C.* the ſaid 23 *l.* and 2 *d.* *Yet* the ſaid *C.* although

Declaration in debt on a judgment after verdict.

although often requeſted, *&c.* hath not yet paid the ſaid 23 *l.* and 2 *d.* to the ſaid *W.* but hath hitherto intirely refuſed, and ſtill doth refuſe to pay him the ſame: Wherefore the ſaid *W.* ſaith that he is injured, and hath damage to the value of 30 *l.* and thereof he bringeth ſuit, *&c.*

Declaration in debt for damages and coſts on a judgment in ejectment in C. B. in Ireland, for the coſts in error in B. R. there, and the coſts in error in B. R. here. Coſts on the judgment. Salk. 469. 3 Salk. 144. Holt. 78.

Middleſex, to wit, *J. L.* gent. complaineth of *R. C.* eſq; in the cuſtody of the marſhal of the *Marſhalſea*, *&c.* of a plea, that he render to him 96 *l.* 4 *s.* and 3 *d.* which he oweth him and unjuſtly detaineth, *for that* to wit, that *whereas* the ſaid *J.* in the court of our ſovereign lord *W.* III. now king of *England*, *Scotland*, *France* and *Ireland*, called the king's court in the kingdom of *Ireland*, before Sir *R. P.* knt. and his companions, then juſtices of our ſaid lord the preſent king of the bench of his kingdom of *Ireland*, in the term of *St. Hilary* in the 6th year of the reign of our ſaid lord the preſent king, by the conſideration of the ſame court recovered againſt the ſaid *R. C.* 33 *l.* 8 *s.* and 3 *d.* which were adjudged by the ſaid court of our ſaid lord the king of his bench in the ſaid kingdom of *Ireland* to the ſaid *J.* by his aſſent, for his damages, which he had as well by occaſion of a certain treſpaſs and ejectment of farm done by the ſaid *R.* to the ſaid *J.* as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *R.* is convicted; as by the record and proceſs remaining in the court of our ſaid lord the preſent king, before the king himſelf here, *to wit*, at *W.* in the county

ty of *M.* which our ſaid lord the preſent king for certain cauſes, cauſed to be tranſmitted into the ſame court of our ſaid lord the preſent king, before the king himſelf, more fully appeareth: Which ſaid judgment remaineth in the ſaid court of our ſaid lord the king, before the king himſelf here, *to wit*, at *W.* aforeſaid in the county of *M.* aforeſaid, in its full force and effect, no ways ſatisfied or diſcharged; and whereupon the ſaid *J.* hath not yet ſued out his execution for the ſaid damages. *Whereupon* an action accrued to the ſaid *J.* to demand and have of the ſaid *R.* the ſaid 33*l.* 8*s.* and 3*d.* parcel of the ſaid 96*l.* 4*s.* and 3*d.* *And alſo whereas* the ſaid *J.* lately in the ſaid court of our ſaid lord the preſent king, before the ſaid king himſelf, called the king's court in his kingdom of *Ireland*, by the conſideration of the ſame court recovered againſt the ſaid *R. C.* 18*l.* 16*s.* ſterling, which were adjudged to the ſaid *J.* for his coſts and damages which he had ſuſtained by occaſion of the delay of execution of the ſaid judgment, by pretence of proſecuting a certain writ of our ſaid lord the king for correcting errors in the ſaid judgment, and that the ſaid *J.* ſhould have his execution thereof, *&c.* as by the record and proceſs of the ſame judgment laſt mentioned, remaining in the court of our ſaid lord the preſent king, before the king himſelf here, *to wit*, at *W.* in the ſaid county of *M.* which our ſaid lord the king, for certain cauſes, cauſes to be tranſmitted into the ſaid court of our ſaid lord the king,

Actio accrevit.

Coſts on affirmance in B. R. in Ireland.

before the king himſelf here, to wit, at *W.* in the ſaid county of *M.* more fully appeared: Which ſaid laſt mentioned judgment alſo remaineth in the ſaid court of our ſaid lord the preſent king, before the king himſelf at *W.* aforeſaid, in the ſaid county of *M.* in its full force and effect, no ways ſatisfied or diſcharged; and the ſaid *J.* hath not yet ſued out his execution for the ſaid 18*l.* 16*s.* for the aforeſaid damages and coſts laſt mentioned: *Whereupon* an action alſo accrued to the ſaid *J.* to demand and have of the ſaid *R.* the ſaid 18*l.* 16*s.* other parcel of the ſaid 96*l.* 4*s.* and 3*d.* *And alſo whereas* the ſaid *J.* lately in the court of our ſaid lord the preſent king, before the king himſelf, to wit, in the term of *St. Hilary* in the ninth year of the reign of our ſaid lord the preſent king, the ſaid court then and ſtill being at *W.* in the ſaid county of *M.* by the conſideration of the ſame court recovered againſt the ſaid *R. C.* 44*l.* which according to the form of the ſtatute in ſuch caſe made and provided were adjudged by the court of our ſaid lord the preſent king, before the king himſelf then and there, to wit, at *W.* in the ſaid county of *M.* to the ſaid *J. L.* for his coſts and damages which he ſuſtained by occaſion of the delay of execution of the ſaid judgment, by the pretence of proſecuting a certain other writ of our ſaid lord the king for correcting errors, and that the ſaid *J. L.* ſhould have his execution thereof, as by the record and proceſs remaining in the ſaid court of our ſaid lord the

Actio accrevit.

Coſts on affirmance here.

the preſent king, before the king himſelf here, to wit, at *W.* in the county of *M.* aforeſaid, more fully appeareth: Which ſaid laſt mentioned judgment remaineth in the ſaid court of our ſaid lord the preſent king, before the king himſelf at *W.* in the county of *M.* in its full force and effect, no ways ſatisfied or diſcharged: And the ſaid *J.* hath not yet ſued out his execution for the ſaid 44 *l.* for his ſaid coſts and damages laſt mentioned. *Whereupon* an action hath accrued to the ſaid *J.* to demand and have of the ſaid *R.* the ſaid 44 *l.* reſidue of the ſaid 96 *l.* 4 *s.* and 3 *d.* *Yet* the ſaid *R.* although often requeſted, *&c.* hath not yet paid the ſaid ſeveral ſums of 33 *l.* 8 *s.* and 3 *d.* 18 *l.* 16 *s.* and 44 *l.* amounting in the whole to 96 *l.* 4 *s.* and 3 *d.* to the ſaid *J.* but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *J.* of 20 *l.* and thereof he bringeth ſuit, *&c.* Actio accrevit.

And the ſaid *R. L.* by —— his attorney, cometh and defendeth the force and injury when, *&c.* *And as to the* ſaid 33 *l.* 8 *s.* and 3 *d.* in the ſaid declaration firſt mentioned, parcel of the ſaid 96 *l.* 4 *s.* and 3 *d.* the ſaid *R.* ſaith, that the ſaid *J.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe he ſaith that there is not any ſuch record of the recovery of the ſaid 33 *l.* 8 *s.* and 3 *d.* againſt the ſaid *R.* as by his ſaid declaration is above ſuppoſed; and this he is ready to verify. *And as to the* ſaid 18 *l.* 16 *s.* in the ſaid declaration ſecondly mentioned, other parcel of the ſaid 96 *l.* Plea. As to the coſts on the judgment, Nul tiel record. As to the coſts on the firſt affirmance, Nul tiel record.

96 *l.* 4 *s.* and 3 *d.* the ſaid *R.* ſaith that the ſaid *J.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe he ſaith that there is not any ſuch record of the recovery of the ſaid 18 *l.* 16 *s.* againſt the ſaid *R.* as by the ſaid declaration is further alſo ſuppoſed; and this he is alſo ready to verify: *And as to* the ſaid 44 *l.* in the ſaid declaration mentioned, reſidue of the ſaid 96 *l.* 4 *s.* and 3 *d.* the ſaid *R.* ſaith that the ſaid *J.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe he ſaith, that the ſaid declaration, as to the ſaid 44 *l.* and the matter therein contained, are not ſufficient in law for him the ſaid *J.* to have or maintain his ſaid action thereupon againſt him for the ſame; to which ſaid declaration, as to the ſaid 44 *l.* the ſaid *R.* hath no need, and is not bound by the law of the land in any manner to anſwer; and this he is ready to verify: Wherefore for default of a ſufficient declaration in this behalf the ſaid *R.* prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action thereupon againſt him for the ſame, *&c.* *And* for cauſes of demurring in law in this behalf to the ſaid declaration, as to the ſaid 44 *l.* the ſaid *R.* according to the form of the ſtatute in ſuch caſe lately made and provided, ſheweth and demonſtrateth to the court here theſe cauſes following, to wit, that the ſaid 44 *l.* adjudged by the court of our ſaid lord the king, before the king himſelf at *W.* to the ſaid *J.* for his coſts, charges and damages, by occaſion of the delay of execu-

As to the coſts on the laſt affirmance, demurrer.

Cauſes of demurrer, thoſe coſts not recoverable here.

execution of the ſaid judgment, by pretence of proſecuting the ſaid writ of error, by the law of the land of this kingdom of *England* are not recoverable in the ſaid court of our ſaid lord the king, before the ſaid king at *W.* And that the ſaid declaration, as to the ſaid 44 *l.* is inſenſible, incertain, and wanteth form; and this the ſaid *R.* is ready to verify; Wherefore he prayeth judgment of the ſaid declaration; and that the ſaid declaration, as to the ſaid 44 *l.* may be quaſhed, *&c.*

And the ſaid *J.* ſaith, that he, by any thing by the ſaid *R.* above alledged in pleading, ought not to be barred from having his ſaid action thereupon againſt the ſaid *R.* becauſe *as to* the ſaid plea above pleaded in bar by the ſaid *R.* as to the ſaid 33 *l.* 8 *s.* and 3 *d.* in the ſaid declaration above firſt mentioned, parcel of the ſaid 96 *l.* 4 *s.* and 3 *d.* the ſaid *J.* ſaith that there is ſuch record of the recovery of the ſaid 33 *l.* 8 *s.* and 3 *d.* againſt the ſaid *R.* remaining in the ſaid court of our ſaid lord the preſent king here, before the king himſelf, to wit, at *W.* in the county of *M.* aforeſaid, as the ſaid *J.* hath above declared thereupon; and this he is ready to verify by the ſaid record, as the court of our ſaid lord the preſent king here ſhall conſider, *&c.* *And* thereupon the ſaid *J.* is bid to have the ſaid record before our ſaid lord the king at *W.* on —— next after —— at his peril; The ſame day is given to the ſaid *R.*

Replication.

Habetur tale recordum.

Day to bring in the record.

R. at the ſame place, *&c. And as to* the ſaid plea above pleaded in bar by the ſaid *R.* as to the ſaid 18 *l.* 16 *s.* in the ſaid declaration ſecondly mentioned, other parcel of the ſaid 96 *l.* 4 *s.* and 3 *d.* the ſaid *J.* alſo ſaith, that there is ſuch record of the recovery of the ſaid 18 *l.* 16 *s.* againſt the ſaid *R.* remaining in the ſaid court of our ſaid lord the king before the king himſelf here, to wit, at *W.* in the ſaid county of *M.* as the ſaid *J.* hath above thereupon declared; and this he is alſo ready to verify by the ſaid record, as the court of our ſaid lord the preſent king here ſhall conſider, *&c. And* upon this the ſaid *J.* is bid alſo to have the ſaid record before our lord the king at *W.* on —— next after —— at his peril: The ſame day is given to the ſaid *R.* at the ſame place, *&c. And as to* the ſaid matter above alledged by the ſaid *R.* to quaſh the ſaid declaration of the ſaid *J.* as to the ſaid 44 *l.* in the ſaid declaration laſt mentioned, reſidue of the ſaid 96 *l.* 4 *s.* and 3 *d.* the ſaid *J.* ſaith, that by any thing before alledged the ſaid declaration of the ſaid *J.* as to the ſaid 44 *l.* ought not to be quaſhed, becauſe he ſaith that the ſaid declaration as to the ſaid 44 *l.* and the matter therein contained, are good and ſufficient in law for him the ſaid *J.* to have and maintain his ſaid action thereupon againſt the ſaid *R.* for the ſame; Which ſaid declaration as to the ſaid 44 *l.* and the matter therein contained, the ſaid *J.* is ready to verify and prove, as the court, *&c.* And becauſe the ſaid *R.* doth not anſwer

Habetur tale recordum.

Day to bring in the record.

Joinder in demurrer.

ſwer to the ſaid declaration as to the ſaid 44*l.* and hath not as yet any ways denied the ſame, the ſaid *J.* prayeth judgment, and his ſaid debt as to the ſaid 44*l.* together with his damages by occaſion of the detaining that debt to be adjudged to him, *&c.* *But* becauſe the court of our ſaid lord the preſent king here is not yet adviſed of giving their judgment of and upon the premiſſes, day is therefore given to the parties aforeſaid, before our lord the king at *W.* until ——— next after ———, to hear their judgment of and upon the ſaid premiſſes, for that the court of our ſaid lord the preſent king here is not yet, *&c.* Continuance.

London, to wit, *I. F. N.* and *J. F. N.* complain of *G. D.* eſq; otherwiſe the right honourable *G.* marquis *D.* being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea that he render to them 17,100*l.* of lawful money of *G. B.* which he oweth them and unjuſtly detaineth; *For that*, to wit, *that whereas* by a certain writing or agreement made at *L.* aforeſaid, to wit, in the pariſh of, *&c.* on the 29th day of *Auguſt* in the year of our Lord 1720, reciting, that whereas the ſaid *I.* and *J.* for the conſideration in the ſaid writing mentioned, had bargained and ſold to the ſaid *G.* 900*l.* intereſt or credit in the principal capital ſtock and fund of the governor and company of merchants of *Great Britain*, trading to the *South Seas* and other parts of *America*, and for encouraging Declaration in debt on a bond contained in a deed for performance of an agreement in that deed. B. R.

couraging the fiſhery, &c. Which ſaid 900 *l.* ſtock they the ſaid *I.* and *J.* for themſelves, their executors, adminiſtrators and aſſigns, covenanted, promiſed and agreed to transfer, or cauſe to be transferred, to the ſaid *G.* his executors, adminiſtrators or aſſigns, within fourteen days next after the opening of the transfer-books after the *Chriſtmas* dividend next enſuing the date thereof; and the ſaid *G.* by the ſaid writing covenanted, promiſed and agreed for himſelf, his executors and adminiſtrators, on the transferring the ſaid 900 *l.* ſtock, to pay, or cauſe to be paid, to the ſaid *I.* and *J.* their executors, adminiſtrators or aſſigns, for the ſaid ſtock, the ſum of 8550 *l.* of lawful money of *G. B.* and by the ſaid writing it is mentioned that it was mutually agreed by and between the ſaid parties, that the laſt *Midſummer* dividend, and all other dividends, profits and commodities whatſoever, which ſhould ariſe or become due upon account of the ſaid 900 *l.* ſtock, ſhould be and remain to and for the proper uſe, benefit and advantage of the ſaid *G.* his executors, adminiſtrators and aſſigns. *And* for the true obſervance and performance of the ſaid agreement on the part of the ſaid *G.* to be performed, the ſaid *G.* by the ſaid writing bound himſelf, his heirs, executors and adminiſtrators, to the ſaid *I.* and *J.* their heirs, executors and adminiſtrators, in the penal ſum of 17,100 *l.*

Profert. as by the ſaid writing, *which* the ſaid *I.* and *J.* under the ſeal of the ſaid *G.* bearing date the ſame 29th day of *Auguſt* in the year afore-

aforeſaid, bring here into court, more fully appeareth. *And* the ſaid *I.* and *J.* in fact ſay, that the ſaid transfer-books, after the *Chriſtmas* dividend made by the company next after the date of the ſaid writing, were opened upon the 1ſt day of *May* in the year of our Lord 1721, at *L.* aforeſaid; and that the ſaid *I.* and *J.* within 14 days next after the opening of the ſaid books, that is to ſay, on the 12th day of *May* in the year of our Lord 1721, the ſaid 12th day being a transfer day from eleven of the clock in the forenoon until one of the clock in the afternoon of the ſame day, at the office of the ſaid company, in a certain room called the transfer-room, at *L.* aforeſaid, were ready to transfer to the ſaid *G.* the ſaid 900 *l.* ſtock in the transfer books of the ſaid company, and then and there offered to transfer the ſaid 900 *l.* to the ſaid *G.* in the ſaid books, but neither the ſaid *G.* nor any one on this behalf then came or was preſent to accept the ſaid ſtock; nor did the ſaid *G.* then or at any other time pay to the ſaid *I.* and *J.* or to either of them, the ſaid 8550 *l.* for the ſaid ſtock, according to the ſaid agreement. *And* the ſaid *I.* and *J.* ſay, that the uſual manner of transfering ſtock in the capital ſtock or fund of the governor and company aforeſaid, was on the ſame 12th day of *May* and long before had been, by transferring ſuch ſtock in the ſaid books at the ſaid office, in the room aforeſaid, on transfer-days, at any time between nine of the clock in the forenoon and one of the clock in the afternoon; Averment.

whereby an action accrued to the ſaid *I.* and *J.* to demand and have of the ſaid *G.* the ſaid 17,100 *l.* *Neverthelefs* the ſaid *G.* altho' often requeſted, hath not paid the ſaid 17,100 *l.* or any part thereof, to the ſaid *I.* and *J.* or either of them, but hath intirely refuſed, and doth ſtill refuſe to pay the ſame to them, to the damage of the ſaid *I.* and *J.* of 100 *l.* And thereof they bring ſuit, *&c.*

Plea, Non debet.

And the ſaid *G.* by *J. H.* his attorney cometh and defendeth the wrong and injury when, *&c.* and ſaith that he doth not owe to the ſaid *I.* and *J.* the ſaid 17,100 *l.* or any part thereof, in manner and form as the ſaid *I.* and *J.* above complain againſt him; and of this he putteth himſelf upon the country: *And* the ſaid *I.* and *J.* do the like. *Therefore*, &c.

Iſſue.

Declaration in debt on the ſtatute 21 Hen. 8. c. 13. for non reſidence. Lill. Ent. 151.

R. F. who as well, *&c.* complaineth of *W. C.* in the cuſtody of the marſhal, *&c.* of a plea, that he render to our ſaid lord the king, and to the ſaid *R.* who as well, *&c.* 70 *l.* of lawful money of *England*, which he oweth to our ſaid lord the king, and to the ſaid *R.* who as well, *&c.* and unjuſtly detaineth, *For that*, that the ſaid *W.* on the 1ſt day of *April* in the 4th year of the reign of our ſaid lord the preſent king, and from that time continually afterwards, for the ſpace of one whole year thence next enſuing, was and continued a ſpiritual and beneficed perſon, to wit, the ſaid *W.* for the whole time aforeſaid was and ſtill is vicar of the vicarage of the parochial church of *M.* and heneficed in the ſame; and that the ſaid *W.* for ſeven months

months together, in the year aforeſaid, to be computed from the firſt day of *May* in the ſame year, was not perſonally reſident or abiding at or on his ſaid vicarage, nor in, at or upon any other his benefice, but the ſaid *W.* voluntarily abſented himſelf the ſaid ſeven months from his ſaid vicarage, and was not reſident upon his ſaid vicarage, nor in, at or upon any other benefice, contrary to the form of the ſtatute in ſuch caſe made and provided: *Whereby* an action accrued to the ſaid *R.* who as well, *&c.* to demand and have of the ſaid *W.* 70*l.* to wit, 10*l.* for every month committed by the ſaid *W.* as aforeſaid, contrary to the form of the ſaid ſtatute. *Yet* the ſaid *W.* although often requeſted, *&c.* hath not yet paid the ſaid 70*l.* to our ſaid lord the king, and to the ſaid *R.* who as well, *&c.* but hath hitherto intirely refuſed, and ſtill doth refuſe to pay them the ſame: Wherefore the ſaid *R.* who as well, *&c.* ſaith that he is injured, and hath damage, to the value of 20*l.* and thereof as well for our ſaid lord the king as for himſelf he bringeth ſuit, *&c.* Actio accrevit.

Leiceſterſhire, to wit, Sir *N. C.* bart. complaineth of *W. F.* eſq; in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king and lady the queen, before the ſaid king and queen, of a plea that he render to him 280*l.* of lawful money of *England*, which he oweth him and unjuſtly detaineth; *for that*, to wit, that *whereas* the ſaid Sir *N.* on the 24th day of *March* in the fourth year of the reign of our late ſovereign lord *James* II. late Declaration in debt for rent.

king of *England*, &c. at *F.* in the county aforeſaid, had demiſed, granted, and to farm let, unto the ſaid *W.* the ſeveral cloſes or parcels of land of the ſaid Sir *N.* following, *to wit*, the weſt meadow at the end of the mill, the *Mill's cloſe*, otherwiſe *Mile's cloſe*, the *Hall-cloſe*, the *Red-field*, the *Lilly-cloſe*, the *Gate-cloſe*, the *Warren*, the *Furzy-cloſe*, the *Middle-cloſe*, and the *Highway-cloſe* lying and being in *F.* aforeſaid in the county aforeſaid; *To have* and to hold the ſaid ſeveral cloſes or parcels of land, with the appurtenances, to the ſaid *W.* and his aſſigns, from the ſaid 24th day of *March* in the fourth year aforeſaid, unto the end and term of one whole year thence next enſuing and fully to be complete and ended: *Yielding* and paying therefore to the ſaid Sir *N.* and his aſſigns the rent or ſum of 280*l.* of lawful money of *England*. *By virtue* of which ſaid demiſe the ſaid *W.* entered into the ſaid tenements with the appurtenances, and was poſſeſſed thereof, and had, held and occupied the ſaid tenements with the appurtenances. *And* the ſaid 280*l.* for the ſaid year ended at the feaſt of the annunciation of the bleſſed virgin *Mary*, in the firſt year of the reign of our ſovereign lord and lady *W.* and *M.* now king and queen of *England*, &c. were and ſtill are in arrear and unpaid: *Whereby* an action accrued to the ſaid Sir *N.* to demand and have of the ſaid *W.* the ſaid 280*l.* *Yet* the ſaid *W.* although often requeſted, &c. hath not yet paid the ſaid 280*l.* to the ſaid Sir *N.* but hath hitherto intirely refuſed, and ſtill

Habendum.

Reddendum.

Defendant entered.

Rent arrear.

Actio accrevit.

doth refuſe to pay him the ſame, to the damage of the ſaid Sir *N.* of 100*l.* And therefore he bringeth ſuit, *&c.*

And the ſaid *W.* by ——— his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid Sir *N.* at the time of the ſaid demiſe in the ſaid declaration mentioned, had nothing in the ſaid tenements whereof he was able to make the ſaid demiſe; and this the ſaid *W.* is ready to verify: Wherefore he prayeth judgment if the ſaid Sir *N.* ought to have or maintain his ſaid action thereupon againſt him, *&c.*

Plea, Nil habuit in tenementis. 3 Lev. 193, 146. 2 Vent. 251. Pract. Reg. 214. Townſ. tabl. 149.

And the ſaid Sir *N.* ſaith, that he by any thing by the ſaid *W.* above in pleading alledged, ought not to be barred from having his ſaid action thereupon againſt him; *becauſe* he ſaith that heretofore, *to wit*, in the term of *St. Michael* in the 32d year of the reign of our late ſovereign lord *Charles* II. late king of *England*, *&c.* one Sir *J. C.* knt. and bart. deceaſed, in his life-time, in the court of Common Bench at *W.* before Sir *F. N.* and his companions, then juſtices of the ſaid late king of the bench aforeſaid, at *W.* in the county of *M.* by the conſideration of the ſame court recovered againſt *G. F.* eſq; by the name of *G. F.* of *F.* in the county of *L.* eſq; as well a certain debt of 2000*l.* as 40*s.* which then in the ſaid court of Common Bench were adjudged to the ſaid Sir *J. C.* for his damages which he had as well by occaſion of the detaining that debt, as for his coſts and charges by him about his ſuit in that behalf expended, whereof the ſaid *G.*

Replication. Judgment in C. B. recovered by plaintiff's teſtator againſt defendant's anceſtor.

was convicted, as by the record and proceſs thereupon remaining of record in the ſaid court of Common Bench at *W.* more plainly appeareth; which ſaid judgment was had and obtained for a true and juſt debt due to the ſaid Sir *J. C.* by the ſaid *G. F.* and then and ſtill no ways paid or ſatisfied; and the ſaid judgment had and obtained in form aforeſaid, then remained in its full force and effect, no ways reverſed, annulled or ſatisfied. *And* the ſaid Sir *N.* further in fact ſaith, that the ſaid Sir *J. C.* in his life-time afterwards, *to wit*, on the 28th day of *November* in that ſame term, came into the ſaid court of Common Bench at *W.* aforeſaid by *J. D.* his attorney, and by the ſtatute in ſuch caſe made and provided, choſe to be delivered to him all the goods and chattels of the ſaid *G.* except the oxen and beaſts of his plough, and alſo a moiety of all his lands and tenements, to keep the ſaid goods and chattels as his own proper goods and chattels, and alſo to hold the ſaid moiety as his freehold to him and his aſſigns, according to the form of the ſaid ſtatute, until the ſaid debt and damages ſhould be thereof levied; and he prayed the writ of our late ſovereign lord *Charles* II. late king of *England*, *&c.* to be directed to the ſheriff of *L.* and it was granted to him, returnable in the ſame court of Common Bench at *W.* aforeſaid on the octave of *St. Hilary*, *&c.* *At which day* the ſaid Sir *J. C.* by his ſaid attorney came into the ſame court, and the ſheriff did nothing thereupon,

Elegit prayed and awarded.

Vic. non miſit breve.

upon, and did not ſend the ſaid writ. *Therefore*, as before, another writ was made out to him thereupon in form aforeſaid, returnable in the ſame court on the morrow of the *Holy Trinity*, &c. *At which day* the ſaid Sir *J. C.* by his ſaid attorney came into the ſaid court, and the ſheriff, *to wit*, *J. D.* eſq; then returned there a certain inquiſition taken before him at *B.* in the ſaid county of *L.* on the 30th day of *May* then laſt paſt, by the oath of twelve, *&c.* by whom it was found that the ſaid *G.* on the day of taking the ſaid inquiſition was ſeiſed in his demeſne as of fee, of and in one cloſe of paſture with the appurtenances in *F.* in the ſaid county of *L.* called *Mile's cloſe*, containing by eſtimation eight acres or thereabouts, then or late in the tenure or occupation of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of 60 *s.* and of and in one other cloſe of paſture with the appurtenances in *F.* aforeſaid in the ſaid county of *L.* called *Hall cloſe*, containing by eſtimation eighteen acres or thereabouts, then or late in the tenure or occupation of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of 10 *l.* and of and in one other cloſe of paſture with the appurtenances in *F.* aforeſaid in the county aforeſaid, called *Red-field*, containing by eſtimation 140 acres or thereabouts, then or late in the poſſeſſion of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of 40 *l.* and of and in one other cloſe of paſture with the appurtenances in *F.* aforeſaid

Alias awarded.

The return.

in the county aforeſaid, called *Kilby-cloſe*, containing by eſtimation ſixty-eight acres of land or thereabouts, then or late in the tenure or occupation of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of 30 *l.* [*All the ſeveral parcels recited in the ſame manner*] and that the ſaid cloſe called *Mill's cloſe* in *F.* aforeſaid in the county aforeſaid, the ſaid cloſe called *Hall's cloſe*, the ſaid cloſe called *Redfield*, the ſaid cloſe called *Kilby*, the ſaid cloſe called the *Gate-cloſe*, the ſaid cloſe called the *Warren*, the ſaid cloſe called the *Furzy-cloſe*, the ſaid cloſe called the *Middle-cloſe*, the ſaid cloſe called the *Highway-cloſe*, the ſaid cloſe called the *Weſt-meadow* at the end of the mill, being all in the occupation of the ſaid *G. F.* or his aſſigns, and lying and being in *F.* aforeſaid in the ſaid county of *L.* are one juſt and equal moiety of the ſaid meſſuages, lands and tenements. *Which* ſaid moiety the ſaid ſheriff on the ſaid day of taking the ſaid inquiſition, by virtue of the ſaid writ ſo as aforeſaid directed to him, cauſed to be delivered to the ſaid Sir *J. C.* bart. to hold to him and his aſſigns as his freehold, until the ſaid debt and damages ſhould be fully levied as by the ſaid writ he was commanded. *And* the ſaid Sir *N.* further ſaith, that the ſeveral cloſes and parcels of land laſt-mentioned, *to wit*, the *Mill's cloſe*, the *Hall-cloſe*, the *Redfield*, *Kilby-cloſe*, the *Gate-cloſe*, the *Warren*, the *Furzy-cloſe*, *Middle-cloſe*, *Highway-cloſe*, the weſt meadow at the end of the mill, are the ſame cloſes in the ſaid declaration above mentioned

A moiety of the lands delivered.

Which are the lands mentioned in the declaration.

mentioned to be demiſed to the ſaid *W.* *Into* which ſaid cloſes with the appurtenances the ſaid Sir *J. C.* entered in his life-time by virtue of the ſaid delivery, and was ſeiſed thereof as of his freehold until, *&c.* *And* being ſo thereof ſeiſed, the ſaid Sir *J. C.* afterwards, *to wit*, on the 1ſt day of *December* in the year of our Lord 1686, at *L.* in the county of *L.* aforeſaid, made his teſtament and laſt will in writing, and by the ſame conſtituted and appointed the ſaid Sir *N.* executor of his ſaid teſtament, and afterwards died there ſo ſeiſed as aforeſaid. *After* whoſe death the ſaid Sir *N.* proved the ſaid teſtament of the ſaid Sir *J.* in due form of law, and took upon him the burthen of the execution of the ſame: And the ſaid Sir *N.* entered into the ſaid cloſes laſt mentioned with the appurtenances, and was ſeiſed thereof as of his freehold until, *&c.* *And* that at the time of the demiſe in the ſaid declaration above-mentioned, or at any time afterwards, he had not levied the ſaid debt and damages, or any part thereof. *And* ſo the ſaid Sir *N.* ſaith, that he at the time of the demiſe in the ſaid declaration above mentioned had a good and ſufficient eſtate in the ſaid tenements with the appurtenances, whereof he could make the ſaid demiſe of the ſaid tenements with the appurtenances to the ſaid *W.* And this he is ready to verify: Wherefore he prayeth judgment and his ſaid debt, together with his damages by occaſion of the detaining that act, to be adjudged to him, *&c.*

Plaintiff's father entered.

Made his will, and plaintiff executor, and died.

Plaintiff proved the will and entered.

Debt and damages not levied.

And ſo plaintiff had a good eſtate to demiſe.

And

Rejoinder. A prior judgment in the Exchequer recovered by two ſtrangers againſt defendant's anceſtor.

And the ſaid *W.* ſaith, that long before the recovery of the ſaid judgment by the ſaid Sir *J. C.* againſt the ſaid *G. F.* mentioned in the replication of the ſaid Sir *N. to wit*, in the term of the *Holy Trinity* in the 26th year of the reign of our late ſovereign lord *Charles* II. late king of *England*, *&c.* one *W. B.* eſq; and *W. R.* eſq; then debtors of our ſaid late ſovereign lord *Charles* II. then king of *England*, *&c.* came into the court of Exchequer of our then ſaid ſovereign lord *Charles* II. at *W.* before the barons of the ſaid Exchequer, on the 8th day of *July* in the ſame term, by *T. H.* then their attorney, and then complained by bill againſt the ſaid *G. F.* by the name of *G. F.* eſq; then preſent in court on the ſame day, of the plea that he ſhould render to them 6000*l.* which he owed them and unjuſtly detained, for that, to wit, that whereas the ſaid *G. F.* on the laſt day of *May* in the 26th year of the reign of our ſaid ſovereign lord the late king at *L.* to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, had borrowed of the ſaid *W. B.* and *W. R.* the ſaid 6000*l.* to be paid to the ſaid *W. B.* and *W. R.* when he ſhould be thereunto afterwards required: Yet the ſaid *G. F.* although often requeſted, had not then rendered the ſaid 6000*l.* to the ſaid *W. B.* and *W. R.* but had intirely refuſed, and then did refuſe to render the ſame to them or to either of them: Wherefore the ſaid *W. B.* and *W. R.* then ſaid that they were injured, and had damage to the value of 100*l.* Whereby the ſaid *W. B.* and *W. R.* were the

the leſs able to ſatisfy our ſaid ſovereign lord the then king the debts which they then owed to our ſaid then lord the king, at his ſaid Exchequer, as they ſaid; and thereof they brought ſuit, *&c.* And they then found pledges for proſecuting, *J. D.* and *R. R.* *And* the ſaid *G. F.* by *R. O.* then his attorney, came and defended the force and injury when, *&c.* and then prayed oyer of the ſaid bill, and it was read to him, *&c.* Which being read and heard, the ſaid *G.* then ſaid that he could not deny the ſaid action of the ſaid *W. B.* and *W. R.* nor but that he owed to the ſaid *W. B.* and *W. R.* the ſaid 6000 *l.* in manner and form as the ſaid *W. B.* and *W. R.* by their ſaid declaration then declared againſt him. Therefore it was then conſidered by the barons there, that the ſaid *W. B.* and *W. R.* ſhould recover againſt the ſaid *G. F.* their ſaid debt, and alſo their damages by occaſion of the detaining that debt to 20 *s.* adjudged by the ſaid court to the ſaid *W. B.* and *W. R.* by their aſſent; and that the ſaid *G. F.* ſhould be in mercy, *&c.* as by the record and proceſs thereupon remaining in the ſaid court of Exchequer, of the ſaid late king at *Weſtminſter* more fully appeareth; which ſaid judgment was had and obtained in form aforeſaid, for a true and juſt debt then due, by the ſaid *G. F.* to the ſaid *W. B.* and *W. R.* and to this time no ways paid or ſatisfied; and the ſaid judgment ſtill remaineth in its full force and effect, no ways reverſed, annulled or ſatisfied. *And* the ſaid *W. B.* and *W. R.* ſaid that they, the ſaid *W. B.* and

By Cognovit actionem.

Elegit prayed and awarded.

and *W. R.* afterwards came into the court of Exchequer of the ſaid late king, and by the ſtatute in ſuch caſe preſcribed, choſe to be delivered to them, all the goods and chattels of the ſaid *G.* except the oxen and beaſts of his plough, and alſo a moiety of all the lands and tenements of the ſaid *G.* to keep the ſaid goods and chattels as their own proper goods and chattels, and alſo to hold the ſaid moiety as their freehold, to them and their aſſigns, according to the form of the ſaid ſtatute, until they ſhould thereof levy the ſaid debt and damages. Whereupon, afterwards, to wit, on the 29th day of *November* in the term of *St. Michael* in the 27th year of the reign of our ſaid late ſovereign lord *Charles* the ſecond, late king of *England*, by the writ of the ſaid late king, of *elegit*, proſecuted for and upon the ſaid judgment, directed to the ſaid then ſheriff of the county of *Leiceſter*, it was commanded to the ſaid then ſheriff of the county of *Leiceſter*, that without delay he cauſe to be delivered to the ſaid *W. B.* and *W.* by a reaſonable price and extent, all the goods and chattels of the ſaid *G.* except the oxen and beaſts of his plough, and alſo a moiety of all the lands and tenements in his bailiwic, whereof the ſaid *G.* was ſeiſed on the morrow of the *Holy Trinity* in the 26th year of the reign of the ſaid late king of *England*, *&c.* on which day the ſaid judgment was given, or at any time afterwards, to keep the ſaid goods and chattels as their own proper goods and chattels; and alſo to hold the ſaid moiety as their

their freehold to them and their aſſigns according to the form of the ſaid ſtatute, until they ſhould thereof levy the ſaid debt and damages: And the ſaid ſheriff was commanded to make appear to the barons of the ſaid Exchequer at *Weſtminſter*, on the octave of the purification of the bleſſed virgin *Mary* then next enſuing, under his ſeal and the ſeals of them by whoſe oath he ſhould make the ſaid extent and appraiſement, in what manner the ſaid writ ſhould be executed, together with the names of them, by whoſe oath he ſhould make that extent and appraiſement, and the ſaid writ. *At which day*, the ſaid *W. B.* and *W. R.* came into the ſaid court in their proper perſons, and the ſheriff, to wit, *W. C.* eſq; then ſheriff of the ſaid county of *Leiceſter*, returned, that the ſaid *G. F.* had no goods or chattels, in his bailiwic, whereof he could cauſe to be made the ſaid debt or any part thereof: And he further returned upon the ſaid writ, a certain inquiſition, taken before him at the borough of *Leiceſter* in the ſaid county of *Leiceſter*, on the 3d day of *February* in the 28th year of the reign of our ſaid late ſovereign lord king *Charles* II. by the oath of *E. B. T. H. &c.* [*naming all the jurors*] good and lawful men of his county, who, being ſworn and charged upon their ſaid oath, ſaid, that the ſaid *G. F.* eſq; in the ſaid writ named, at the time of giving the ſaid judgment ſpecified in the ſaid writ, *to wit*, on the morrow of the *Holy Trinity* in the 26th year of the reign of the ſaid late king *Charles* II. the time

Return.

Nulla bona.

An inquiſition.

time of giving the ſaid judgment, was ſeiſed, and then ſtood ſeiſed in his demeſne as of fee, of and in one capital meſſuage, with the appurtenances, ſituate, lying and being in *F.* in the county aforeſaid, then in the tenure or occupation of the ſaid *J. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of ten ſhillings, and of and in one cloſe of paſture, with the appurtenances in *F.* aforeſaid in the county aforeſaid, called the *Barn-yard*, containing by eſtimation two acres, in the tenure or occupation of the ſaid *G. F.* or his aſſigns, of the clear yearly value in all iſſues above repriſes of ten ſhillings, and of and in one cloſe of paſture with the appurtenances in *F.* aforeſaid in the county aforeſaid, called *Mill's cloſe*, containing by eſtimation, *&c.* [*writing all the particulars*] *Which* ſaid capital meſſuage, with the appurtenances, the ſaid cloſe called *Barn-yard*, the ſaid cloſe called *Mill's cloſe*, the ſaid cloſe called *Hall's cloſe*, the ſaid cloſe called *Redfield*, the ſaid cloſe called *Kilby-cloſe*, the ſaid cloſe called *Gate-cloſe*, the ſaid cloſe called the *Warren*, the ſaid cloſe called *Furzy-cloſe* [*with ſome others recited*] with all and ſingular their appurtenances, are one equal moiety of all and ſingular the ſaid demiſed meſſuages, lands and tenements, which ſaid moiety, he the ſaid ſheriff, on the day of taking the ſaid inquiſition by virtue of the ſaid writ, cauſed to be delivered to the ſaid *W. B.* and *W. R.* in the ſaid writ mentioned, to hold to them and their aſſigns, as their freehold, until the debt and damages in

Moiety of the lands delivered.

in the ſaid writ named, ſhould be thereof fully levied, as by the ſaid writ he was commanded: And the ſaid *W.* further ſaith, that the ſaid ſheriff further returned, that the ſaid jurors upon their ſaid oath further ſaid, that the ſaid *G. F.* in the ſaid writ mentioned had not, nor had on the day of taking the ſaid inquiſition and giving the ſaid judgment, or at any time afterwards, any other or more meſſuages, lands or tenements, or any goods or chattels in his bailiwic to the knowledge of the ſaid jurors, or by any evidence ſhewn to them, as by the ſaid writ, return and inquiſition aforeſaid, affiled of record in the ſaid court of Exchequer of our ſaid late lord king *Charles* II. more fully appeareth. *And* the ſaid *W. F.* further ſaith, that the ſeveral cloſes and parcels of land, *to wit*, the *Mile's cloſe*, the *Hall's cloſe*, the *Redfield*, the *Kilby-cloſe*, the *Gate-cloſe*, the *Warren*, the *Furzy cloſe*, the *Higbway-cloſe*, the *Weſt meadow* at the bridge, the *Weſt meadow* at the end of the *Middle-cloſe*, parcel of the cloſes and tenements in the ſaid inquiſition mentioned, and by the ſaid ſheriff of the ſaid county of *Leiceſter* delivered by the ſaid inquiſion to the ſaid *W. B.* and *W. R.* to hold to them and their aſſigns, until they ſhould fully levy the ſaid debt and damages due to them, and the cloſes in the ſaid declaration mentioned to be demiſed, by the ſaid Sir *N.* to the ſaid *W. F.* are one and the ſame cloſes, and not other nor different. *Into* which ſaid cloſes, with the appurtenances,

The lands delivered and the lands in the declaration the ſame.

The plaintiffs in the action

entered before the plaintiff's demiſe.

purtenances, the ſaid *W. B.* and *W. R.* by virtue of the ſaid delivery, before the demiſe in the ſaid declaration mentioned to have been made by the ſaid Sir *N.* to the ſaid *W. F.* entered, and were ſeiſed thereof, as of their freehold until, *&c.* *And* being ſo ſeiſed thereof, the ſaid *W. R.* afterwards, *to wit*, on the firſt day of *February* in the year of our Lord 1697, at *F.* aforeſaid in the ſaid county of *Leiceſter* died, and the ſaid *W. B.* ſurvived him, and held himſelf in by right of ſurvivorſhip. *And* the ſaid *W. F.* further ſaith, that neither the ſaid *W. B.* and *W. R.* or either of them, in the life-time of the ſaid *W.* had levied, nor had either of them levied the ſaid debt and damages, neither hath the ſaid *W. B.* ſince the death of the ſaid *W. R.* yet levied the ſaid debt and damages, but great part thereof, to wit, the ſum of 5000*l.* and more ſtill remains due to the ſaid *W. B.* no ways levied or ſatisfied. *And* ſo the ſaid *W. F.* ſaith, that the ſaid Sir *N.* at the time of the ſaid demiſe, in the ſaid declaration above-mentioned, had not a good and ſufficient eſtate in the ſaid tenements, with the appurtenances, out of which he could make the ſaid demiſe of the ſaid tenements, with the appurtenances, to the ſaid *W. F.* And this the ſaid *W. F.* is ready to verify: Wherefore the ſaid *W. F.* (as before) prayeth judgment if the ſaid Sir *N.* ought to have or maintain his ſaid action againſt him.

The one dies, the ſurvivor holds jure accreſcendi.

Their debt not levied.

And ſo plaintiff had no title to demiſe.

And

And the ſaid Sir *N.* ſaith, that the ſaid judgment in form aforeſaid had and obtained by the ſaid *W. B.* and *W. R.* againſt the ſaid *G. F.* was had and obtained by fraud and covin then before had between the ſaid *W. B.* and *W. R.* the ſaid *G. F.* at *F.* aforeſaid in the ſaid county of *Leiceſter*, to defraud the ſaid Sir *N.* and other creditors of the ſaid *G.* of their true and juſt debts; and this he is ready to verify: Wherefore (as before) he prayeth judgment and his ſaid debt, together with his damages, by occaſion of the detaining that debt, to be adjudged to him, *&c.* Surrejoinder, That the judgment was obtained per fraudem.

And the ſaid *W.* ſaith, that the ſaid judgment had and obtained in form aforeſaid by the ſaid *W. B.* and *W. R.* againſt the ſaid *G. F.* was had and obtained for a true and juſt debt, due to the ſaid *W. B.* and *W. F.* by the ſaid *G. F.* *Without* this, that the ſaid judgment had and obtained in form aforeſaid, by the ſaid *W. B.* and *W. R.* againſt the ſaid *G. F.* was had and obtained by fraud and covin before and between the ſaid *W. B.* and *W. R.* and the ſaid *G. F.* to defraud the ſaid Sir *N.* and other creditors of the ſaid *G.* of their true and juſt debts, in manner and form as the ſaid Sir *N.* hath above pleaded in ſurrejoining; and this he is ready to verify: Wherefore (as before) he prayeth judgment, and that the ſaid Sir *N.* may be barred from having his ſaid action thereupon againſt him the ſaid *W. &c.* Rebutter. The judgment was for a juſt debt. Traverſe.

Surrebutter maintains the ſurrejoinder.

And the ſaid Sir *N.* (as before) ſaith that the ſaid judgment, in form aforeſaid had and obtained by the ſaid *W. B.* and *W. R.* againſt the ſaid *G. F.* was had and obtained by fraud and covin before had between the ſaid *W. B.* and *W. R.* and the ſaid *G. F.* to defraud the ſaid Sir *N.* and the other creditors of the ſaid *G. F.* of their true and juſt debts, in manner and form as the ſaid Sir *N.* hath above in ſurrejoining pleaded, at *F.* aforeſaid in the county of *Leiceſter* aforeſaid; and this he prayeth may be inquired of by the country: *And* the ſaid *W. F.* doth ſo likewiſe, *&c.* Therefore let a jury thereupon come before our lord the king, and lady the queen, at *Weſtminſter*, on next after and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* the ſame day is given to the parties aforeſaid at the ſame place, *&c.*

Iſſue.

Declaration in debt by baron and feme executrix, for rent due after teſtator's death.

Middleſex, to wit, Sir *T. A. P.* bart. and *E.* his wife, executrix of the teſtament and laſt will of Sir *J. D.* knt. of the *Bath*, her late father deceaſed, complaineth of Sir *J. J.* knt. otherwiſe lately called *J. J.* of *Scotland-yard* in the county of *M.* eſq; in the cuſtody of the marſhal, *&c.* of a plea that he render to them 30*l.* of lawful money of *England*, which he unjuſtly detaineth from them for that, to wit, that *whereas* the ſaid Sir *J. D.* in his life-time, to wit, on the twelfth day of *November* in the 19th year of the reign of our ſovereign lord *Charles* II. now king of *England*, *&c.* at the pariſh of *St. Martin in the Fields* in the ſaid county of *M.* by his certain

The indenture of leaſe.

certain indenture made between the ſaid Sir *J. D.* by the name of the honourable Sir *J. D.* knt. of the *Bath*, of the one part, and the ſaid Sir *J. J.* by the name of *J. J.* of *Scotland-yard* in the county of *M.* of the other part, *the* counter part of which, ſealed with the ſeal of the ſaid Sir *J. J.* the ſaid Sir *T.* and *E.* bring here into court, the date whereof is on the ſame day and year aforeſaid, had demiſed, granted, and to farm let, to the ſaid Sir *J. J.* All thoſe chambers, cellars, cloſets, kitchen, coal-houſe, coach-houſe, yard and piece of land, and other rooms of the ſaid Sir *J. D.* then in the occupation of the ſaid Sir *J. J.* and ſituate and being in *Scotland-yard* aforeſaid, near *Whitehall* in the ſaid pariſh of *St. Martin in the Fields* in the county of *M.* aforeſaid, together with all ways, paſſages, lights, eaſements and appurtenances to the ſame premiſſes belonging; *To have* and to hold the ſaid premiſſes, with the appurtenances, to the ſaid Sir *J. J.* his executors, adminiſtrators and aſſigns, from the feaſt day of *St. Michael* the archangel then laſt paſt, until the full end and term of 30 years thence next enſuing and fully to be complete and ended; *Yielding* and paying therefore, during the firſt two years and three quarters of a year, of the ſaid term of thirty years, to the ſaid Sir *J. D.* his executors, adminiſtrators and aſſigns, the yearly rent of one pepper-corn, at the feaſt of *St. Michael* the archangel, if the ſame ſhould be lawfully demanded; and yielding and paying alſo to the ſaid Sir *J. D.* his execu-

Profert.

Demiſe.

Habendum.

Reddendum.

tors, adminiſtrators and aſſigns, during the reſidue of the ſaid term of 30 years, the yearly rent of 60 *l.* of lawful money of *England*, at the feaſt of *St. Michael* the archangel, the nativity of our Lord God, the annunciation of the bleſſed virgin *Mary*, and the nativity of *St. John* the baptiſt; as by the ſaid indenture amongſt other things more fully appears; *By virtue* of which ſaid demiſe the ſaid Sir *J. J.* afterwards, to wit, on the 1ſt day of *January* in the 19th year aforeſaid, entered into the premiſſes aforeſaid with the appurtenances, and was and ſtill is poſſeſſed thereof. *And* the ſaid Sir *J. D.* afterwards, to wit, on the 13th day of *March* in the year of our Lord 1668, in the ſaid pariſh of *St. Martin in the Fields* in the county of *M.* aforeſaid, made his teſtament and laſt will in writing, and by the ſame conſtituted and appointed the ſaid *E.* ſole executrix thereof; and afterwards, to wit, on the 1ſt day of *May* in the year of our Lord 1670, at the ſaid pariſh of *St. Martin in the Fields* in the county of *M.* aforeſaid died; after the death of which ſaid *J. D.* ſhe the ſaid *E.* took upon her the execution of that teſtament, and afterwards, to wit, on the 9th day of *May* in the year of our Lord laſt aboveſaid, at the ſaid pariſh of *St. Martin the Fields* in the county of *M.* aforeſaid, in due form of law proved the ſaid will; and afterwards, to wit, on the firſt day of *May* in the 29th year of the reign of our ſaid ſovereign lord the preſent king, at the ſaid pariſh of *St. Martin in the Fields* in the

Defendant entered.

Teſtator made his will, and plaintiff E. executrix,

and died.

She proves the will.

And marries the plaintiff Sir T.

county of *M.* aforeſaid, married the ſaid Sir *T.* *And* 30 *l.* for rent of the ſaid premiſſes, for half a year ended at the feaſt of the nativity of *St. John* the baptiſt laſt paſt, were in arrear to the ſaid Sir *T.* and *E.* and after the death of the ſaid Sir *J. D.* and after the marriage between the ſaid Sir *T.* and *E.* celebrated, and ſtill are in arrear and unpaid: *Whereby* an action accrued to the ſaid Sir *T.* and *E.* to demand and have of the ſaid Sir *J. J.* the ſaid 30 *l.* *Yet* the ſaid Sir *J. J.* although often requeſted, *&c.* hath not yet paid the ſaid 30 *l.* to the ſaid Sir *T.* and *E.* or to either of them, but to pay the ſame to them or to either of them hath intirely refuſed, and ſtill doth refuſe, and unjuſtly detaineth, to the damage of the ſaid Sir *T.* and *E.* of 60 *l.* And thereof they bring ſuit, *&c.* *And* the ſaid Sir *T.* *A P.* and *E.* bring here into court the letters teſtamentary of the ſaid Sir *J. D.* by which it ſufficiently appeareth to the court here, that the ſaid *E.* is executrix of the ſaid teſtament, *&c.*

Rent-arrear.

Actio accrevit.

Profert of the letters teſtamentary.

Mich. *term* 17 Geo. III.

London, *to wit.* *John Haines* complains of *Robert Howard*, being in the cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lord *George* the king, before the king himſelf, of a plea, that he render to him 1500 *l.* of lawful money of *Great Britain*, which he owes to and unjuſtly detains from

Declaration in debt upon an award.

him, for that, to wit, that whereas certain ſuits and differences were had and moved between him the ſaid *John* and the ſaid *Robert*, touching and concerning certain ſums of money, due to the ſaid *John* by the ſaid *Robert*, for books by him the ſaid *John* to the ſaid *Robert*, before that time, ſold and delivered. *And whereas* for the adjuſting and determining ſuch ſuits and differences, as well the ſaid *John* as the ſaid *Robert*, on the 24th of *October* in the 14th year of the reign of our ſovereign lord *George* the third, king, &c at *London* aforeſaid, to wit, in the pariſh of *St. Dunſtan in the Eaſt*, in the ward of *Farrington Without*, ſubmitted and put themſelves to the award, order, determination and judgment of one *Thomas Worrall*, merchant, and *Richard Lucas*, citizen and ſtationer of *London*, arbitrators indifferently elected, as well on the behalf of the ſaid *John*, as on the behalf of the ſaid *Robert*, to award, order, determine and adjudge of and concerning all actions, ſuits, quarrels, controverſies, treſpaſſes, variancies, claims and demands whatſoever, then depending and being between the ſaid parties from the beginning of the world until the ſaid 24th *October* in the year aforeſaid; ſo that the ſaid arbitrators made and declared their award touching the premiſſes in writing, under their hands and ſeals, ready to be delivered to the ſaid *John* and the ſaid *Robert*, on or before the 7th day of *November* then next following; and if the ſaid arbitrators ſhould not agree upon their ſaid award at and by the time aforeſaid, then as well the ſaid *Robert*,

Robert, as the ſaid *John* on the ſaid 24th day of *October* in the year aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, did put themſelves under the award and umpirage of ſuch perſon as the ſaid arbitrators ſhould nominate and elect to finiſh and determine the premiſſes, ſo that the umpirage and award of ſuch umpire ſhould be made in writing, under his hand and ſeal, ready to be delivered to the ſaid *John* and the ſaid *Robert*, on or before the 30th day of the ſaid month of *November*. *And whereas* the ſaid arbitrators at any time after the ſaid 24th day of *October* in the year aboveſaid, and at or before the ſaid 7th day of *November* then next following, did not agree, make or declare any award touching the premiſſes aforeſaid in writing, under their hands and ſeals, ready to be delivered to the ſaid *John* and *Robert*, according to the ſubmiſſion aforeſaid; but the ſaid arbitrators afterwards, to wit, on the 7th day of *November*, in the year aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, one *Richard Weekes* of the pariſh of *St. Giles*, without *Cripplegate*, in the county of *Middleſex*, brewer, an umpire, to finiſh and determine the premiſſes aforeſaid, nominated and elected; which ſaid *Richard Weekes* afterwards, before the 30th day of *November* in the year aboveſaid, to wit, on the ſaid 20th day of the ſaid month of *November* at *London* aboveſaid, in the pariſh and ward aforeſaid, having taken upon himſelf the burthen of the ſaid umpirage and award, made his certain umpirage of and concerning the premiſſes,

under the hand and ſeal of the ſaid *Richard Weekes*, and by his ſaid umpirage awarded and ordered, that the ſaid *Robert Howard* ſhould pay or cauſe to be paid to the ſaid *John Haines* the ſum of 1500 *l.* of lawful money of *Great Britain*, within fourteen days then next following, in full of all dues, accounts and ſums of money due to the ſaid *John*; and further, that the ſaid *Robert* ſhould ſeal, or cauſe to be ſealed, and deliver, or cauſe to be delivered, as his act and deed, to the ſaid *John*, his heirs, executors and adminiſtrators, within the ſaid fourteen days, a full and general releaſe and diſcharge of all and all manner of actions, cauſe and cauſes of action, ſuits, bills, bonds, ſpecialties, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, at any time before the date of the ſaid award had, made, moved, commenced, ſued, proſecuted, committed or depending by or between the ſaid parties; whereby an action hath accrued to the ſaid *John*, to demand and have of the ſaid *Robert* the ſaid 1500*l.* but yet the ſaid *Robert*, although often required, *&c.* the ſaid 1500 *l.* hath not paid, or cauſed to be paid, to the ſaid *John*, nor as his act and deed delivered; or cauſed to be delivered, any releaſe or diſcharge to the ſaid *John*, but to pay or deliver the ſame, hath hitherto refuſed, and ſtill doth refuſe, to the damage of the ſaid *John* 20 *l.* and therefore he brings ſuit, *&c.*

Mich.

Mich. *term* 17 Geo. III.

AND the ſaid *Robert*, by *Charles Smythe* his attorney, comes and defends the wrong and injury, when, &c. and ſaith, that the ſaid *John* ought not to have or maintain his ſaid action thereof againſt him, becauſe he ſaith, that he the ſaid *Robert*, within fourteen days next following the ſaid 30th day of the ſaid month of *November*, in the year aboveſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, paid or cauſed to be paid to the ſaid *John* the ſaid ſum of 1500*l.* in full of all dues, accounts and ſums of money due to the ſaid *John*, and alſo then and there did ſeal, or cauſe to be ſealed, and as his act and deed deliver, or cauſe to be delivered, to the ſaid *John* a full and general releaſe of all and all manner of actions, cauſe and cauſes of action, ſuits, bills, bonds, ſpecialties, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages, and demands, according to the form and effect of the ſaid award; and this he is ready to verify: Wherefore he prays judgment, whether the ſaid *John* ought to have or maintain his ſaid action againſt him, &c.

Pl Performance of the award made.

William Holt.

Mich.

Mich. *term* 17 Geo. III.

Replication no performance.

AND the ſaid *John* ſays that he ought not, by any thing by the ſaid *Robert* above alledged in his plea, to be precluded from having his ſaid action againſt him, becauſe he ſays the ſaid *Robert* hath not obſerved, performed, fulfilled and kept any thing in the ſaid award above ſpecified on the part of the ſaid *Robert* to be obſerved, performed, fulfilled or kept; he the ſaid *John* in fact ſaith, that the ſaid *Robert* hath not paid, or cauſed to be paid to the ſaid *John* the ſum of 1500 *l.* within fourteen days next following the ſaid 30th day of the ſaid month of *November*, and which he ought to have paid, or cauſed to be paid, to the ſaid *John*, nor did the ſaid *Robert* ſeal, or cauſe to be ſealed, or as his act and deed deliver, or cauſe to be delivered, to the ſaid *John* any releaſe or diſcharge, and this he is ready to verify; wherefore he prays judgment and his debt aforeſaid, together with his damages on account of detaining the ſaid debt to be adjudged to him, *&c.*

James Farre.

Mich. *term* 17 Geo. III.

Plea. No award or umpirage made.

AND the ſaid *Robert*, by *Charles Smythe* his attorney, comes and defends the wrong and injury, when, *&c.* and ſaith, that the ſaid *John* ought not to have or maintain his

his aforeſaid action thereof againſt him, becauſe he ſaith, that the ſaid *Thomas Worrall* and *Richard Lucas*, the arbitrators aforeſaid, after the making the ſaid writing, and before the ſaid 7th day of *November* in the year aforeſaid, made no award, order, arbitrament, final end or determination in writing, or by word of mouth, between the ſaid parties of or concerning the premiſſes between the ſaid *John* and the ſaid *Robert*: And the ſaid *John* further ſaith, that the ſaid *Richard Weekes*, ſo nominated umpire as aforeſaid, within the time aforeſaid in that behalf limited, made no award, umpirage or determination of or concerning the premiſſes aforeſaid, by writing, or by word of mouth, and this he is ready to verify; wherefore he prays judgment, whether the ſaid *John* ought to have or maintain his ſaid action upon the ſaid writing of award made in manner and form aforeſaid thereof againſt him the ſaid *Robert*, *&c.*

W. H.

Mich. *term* 17 Geo. III.

AND the ſaid *John* ſaith, that he ought not, by any thing by the ſaid *Robert* above alledged in his plea, to be precluded from having his ſaid action thereof, againſt him, becauſe he ſaith the ſaid *Richard*, ſo nominated umpire as aforeſaid, having taken upon himſelf the burthen of making an umpire of and concerning the premiſſes above ſpecified, afterwards, and before the 20th day of the ſaid month

Replication. Umpirage ready to be delivered.

month of *November* made his umpirage in writing of and concerning the ſaid premiſſes, then and there ready to be delivered to the parties aforeſaid, in manner and form aforeſaid, wherefore he prays judgment and his debt aforeſaid, together with his damages on account of detaining the ſaid debt, to be adjudged to him, *&c.*

James Farre.

Mich. *term* 17 Geo. III.

Rejoinder. Umpirage not ready to be delivered.

AND the ſaid *Robert* ſaith, that the ſaid umpirage, under the hand and ſeal of the ſaid umpire, was not ready to be delivered to the ſaid *Robert*, as the ſaid *John* hath above in reply alledged; and this he is ready to verify; wherefore, as before, he prays judgment, and that the ſaid *John* be precluded from having his ſaid action thereof againſt him, *&c.*

Mich. *term* 17 Geo. III.

Plea of tender and refuſal.

AND the ſaid *Robert*, by *Charles Smythe* his attorney, comes and defends the wrong and injury, when, *&c.* and ſaith, that he the ſaid *Robert*, after making the ſaid umpirage, to wit, on the day of in the ſaid umpirage mentioned, tendered to the ſaid *John* the ſaid ſum of 1500 *l.* which the ſaid *John* to receive of the ſaid *Robert*, then and there refuſed, and alſo then and there

there ſealed, and as his act and deed delivered to the ſaid *John* a full releaſe and diſcharge, of all actions and demands, which alſo the ſaid *John* to receive of the ſaid *Robert* then and there likewiſe refuſed; and this he is ready to verify; wherefore he prays judgment, whether the ſaid *John* ought to have his ſaid action againſt him, *&c.*

William Holt.

AND the ſaid *John* ſaith, that he ought not, by any thing before alledged by the ſaid *Robert*, to be precluded from having his ſaid action againſt him the ſaid *Robert*, becauſe he ſaith, that the ſaid *Robert* never tendered to the ſaid *John* the ſaid 1500 *l.* or any releaſe or diſcharge, in manner and form as the ſaid *Robert* above in his plea alledged, and he prays that this may be inquired of by the country, *&c.* Replication. No tender.

J. F.

Ejectment.

Ejectment.

Friday *next after the octave of the purification of the bleſſed virgin* Mary *in the fifteenth year of king* George *the third.*

Rule by conſent in ejectment by original.

R. } IT is ordered by the conſent of the
D. } attornies of both parties, that *J. B.* gent. *W. G. T. R. S. L. T. G.* and *J. S.* be made defendants in the ſtead of the now defendant *D.* and do forthwith appear at the ſuit of the plaintiff, and receive a declaration in an action of treſpaſs and ejectment for the premiſſes in queſtion, and forthwith plead thereto Not guilty; and upon the trial of the iſſue, confeſs leaſe, entry and ouſter, and inſiſt upon the title only; otherwiſe let judgment be entered for the plaintiff againſt the now defendant *D.* by default; and if upon the trial of the iſſue of the ſaid *J. W. T. S. T.* and *J.* ſhall not confeſs leaſe, entry and ouſter, whereby the plaintiff ſhall not be able further to proſecute his writ againſt the ſaid *J. W. T. S. T.* and *J.* then no coſt ſhall be allowed for not further proſecuting the ſame; but the ſaid *J. W. T. S. T.* and *J.* ſhall pay coſts to the plaintiff in that caſe to be taxed: And it is further ordered, that if upon the trial of the ſaid iſſue a verdict ſhall be given for the ſaid *J. W. T. S. T.* and *J.* or it ſhall happen that the ſaid plaintiff ſhall not further

proſecute his ſaid writ for any other cauſe than for not confeſſing leaſe, entry and ouſter, then the leſſor of the plaintiff ſhall pay to the ſaid *J. W. T. S. T.* and *J.* coſts in that behalf to be adjudged.

By the court.

Error.

OUR lord the king ſent to his truſty and well-beloved Sir *T. De G.* knt. chief juſtice of the bench, his writ cloſed in theſe words, to wit, *George* the third, *&c.* To his truſty and well-beloved Sir *W. De G.* knt. his chief juſtice of the bench, greeting. Foraſmuch as in the record and proceſs, and alſo in giving of judgment in a plaint which was in our court before Sir *Charles* lord *C.* late chief of our court of the bench, and his aſſociates, our then juſtices of the ſaid bench, by our writ, between *T. K.* and *J. D.* gent. of a plea of debt as it is ſaid, manifeſt error hath intervened, to the great damage of the ſaid *J.* as by his complaint we are informed; we, willing that the ſaid error, if any be, be duly amended, and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that if judgment be given thereupon, then you ſend

Entry of a writ of writ of error on a judgment in C. B.

The writ of error.

ſend to us diſtinctly and plainly under your ſeal the record and proceſs of the ſaid plaint, with all things touching the ſame, and this writ, ſo that we may have them from *Eaſter* day in fifteen days whereſoever we ſhall then be in *England*, that inſpecting the record and proceſs aforeſaid we may cauſe further to be done thereupon for amending the ſaid error, as of right and according to the law and cuſtom of *England* ſhall be meet to be done. Witneſs Ourſelf at *Weſtminſter* the firſt day of *February* in the tenth year of our reign.

W. King.

The return. *The anſwer of* T. De G. knt. chief juſtice within named.

THE record and proceſs of the plaint within mentioned, with all things touching the ſame, I ſend before our lord the king whereſoever he be in *England*, at the day within contained, in a certain record to this writ annexed, as I am within commanded.

Tho. De Gray.

Paſ. 27 *Car.* 2. *R.* 396.

Memorandum of a bill of the ſame term. *London, to wit.* BE *it remembered*, That on *Wedneſday* next after fifteen days from the day of *Eaſter* in this ſame term, before the

the lord the king at *Weſtminſter*, came *J. J.* by *R. B.* his attorney, and brought here into the court of the ſaid lord the king then there, his certain bill againſt *E. G.* otherwiſe called *E. G. de Lyons inn in com. Midd gener.* in the cuſtody of the marſhal, *&c.* of a plea of debt; and there are pledges for proſecuting, namely *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words, to wit, *London*, to wit, *J. J.* complains of *E. G.* otherwiſe called *E. G. de Lyons inn in com. Midd. gener.* being in the cuſtody of the marſhal of the *Marſhalſea* of the lord the king, before the king himſelf, of a plea that he render to him four hundred pounds of lawful money of *England*, which he owes him, and unjuſtly detains; for that, to wit, that whereas the ſaid *E.* on the 23d day of *May* in the 26th year of the reign of our ſovereign lord *Charles* the ſecond now king of *England*, *&c.* at *London*, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his certain writing obligatory, ſealed with the ſeal of the ſaid *E.* and to the court of our ſaid lord the king now here ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *J.* in one hundred pounds, parcel of the ſaid four hundred pounds, to be paid to the ſaid *J.* when he ſhould be thereunto requeſted: *And whereas* alſo the ſaid *E.* afterwards, to wit, on the ſame twenty-third day of *May* in the twenty-ſixth year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid by his certain other writing obligatory,

Declaration in debt on ſeveral bond. B. R.

gatory, alſo ſealed with the ſeal of the ſaid *E.* and to the court of our ſaid lord the king now here alſo ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *T.* in other one hundred pounds, alſo parcel of the ſaid four hundred pounds, to be paid to the ſaid *T.* when he ſhould be thereunto requeſted: *And whereas* alſo the ſaid *E.* afterwards, to wit, on the ſame twenty-third day of *May* in the twenty-ſixth year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, by his certain other writing obligatory, alſo ſealed with the ſeal of the ſaid *E.* and to the court of our ſaid lord the king now here alſo ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *T.* in other one hundred pounds, alſo parcel of the ſaid four hundred pounds, to be paid to the ſaid *T.* when he ſhould be thereunto requeſted: *And whereas* alſo the ſaid *E.* afterwards, to wit, on the ſame twenty-third day of *May* in the twenty-ſixth year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, by his certain other writing obligatory, alſo ſealed with the ſeal of the ſaid *E.* to the court of our ſaid lord the king now here alſo ſhewn, the date whereof is on the ſame day and year, acknowledged himſelf to be held and firmly bound to the ſaid *T.* in other one hundred pounds, reſidue of the ſaid four hundred pounds, to be paid to the ſaid *T.* when he ſhould be thereunto alſo requeſted: *Nevertheleſs* the ſaid *E.* although often requeſted, &c.

&c. has not yet paid the ſaid four hundred pounds to the ſaid *T.* but hitherto to pay him the ſame has altogether refuſed, and ſtill does refuſe, to the damage of the ſaid *T.* of twenty pounds: And whereupon he brings ſuit, *&c.* *And* the ſaid *E. G.* by *E. M.* his attorney, comes and defends the force and injury, when, *&c.* and ſays, that he cannot deny the ſaid action of the ſaid *T.* nor but that he owes to the ſaid *T.* the ſaid four hundred pounds, above ſpecified in the ſaid declaration, in manner and form as the ſaid *T.* above has declared againſt him; *Therefore* it is conſidered that the ſaid *T.* recover againſt the ſaid *E.* his ſaid debt, and alſo forty-one ſhillings for his damages which he has ſuſtained, as well by the occaſion of the detaining that debt, as for his coſts and charges by him about his ſuit in this behalf expended, adjudged by the court of our ſaid lord the king now here, to the ſaid *T.* by his aſſent. And the ſaid *E.* in mercy, *&c.* *Afterwards*, to wit, on * *Saturday* next after three weeks of *St. Michael* in the twenty-ſeventh year of the reign of our ſovereign lord *Charles* the ſecond now king of *England*, *&c.* before our lord the king at *Weſtminſter*, comes the ſaid *E. G.* by *E. C.* his attorney, and brings here into the court then and there a certain writ of our ſaid lord the king, for correcting error of and upon the ſaid judgment above ſpecified; *And* prays that the ſaid writ may be allowed; and it is allowed.

Judgment by non poteſt dedicere.

Writ of error coram nobis reſiden' brought. 1 Lev. 38. 1 Vent. 208. 3 Danv Abr. 30. p 16.

* No ſuch return at this day. See *Vol.* 1. *p.* —.

lowed him by the ſame court; which ſaid writ
The writ. follows in theſe words, to wit, *Charles* the ſecond, by the grace of God, of *England*, *Scotland*, *France* and *Ireland*, king, defender of the faith, *&c.* To our juſtices aſſigned to hold pleas before us, greeting. Foraſmuch as in the record and proceſs, as alſo in giving of judgment of a plaint, which was in our court before us by bill between *T. T.* and *E. G.* otherwiſe called, *&c.* of a debt of four hundred pounds, which the ſaid *T.* demands from the ſaid *E.* as it is ſaid, which ſaid record and proceſs is remaining before us, manifeſt error hath intervened, to the great damage of the ſaid *E.* as by his complaint we are informed; we, willing that the ſaid errors, if any be, be duly amended, and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that viewing the record and proceedings aforeſaid, you cauſe further to be done therein for correcting the ſaid error, as of right and according to the law and cuſtom of our kingdom of *England* ſhall be to be done. Witneſs Ourſelf at *Weſtminſter* the twenty-third day of *October* in the twenty-
Superſeded for want of proſecution. ſeventh year of our reign. *And* thereupon afterwards it is conſidered by the court of our ſaid lord the king now here, that the ſaid writ of error, for want of proſecution thereupon on the part of the ſaid *E.* be altogether ſuper-
Another writ brought. ſeded, *&c.* *And* afterwards, to wit, on *Tueſday* next after three weeks of the Holy *Trinity*, before our ſaid lord the king at *Weſtminſter*, came the ſaid *E.* by his attorney aforeſaid, and alſo brings here into the court then and

there, a certain other writ of our ſaid lord the king, for correcting error of and upon the ſaid judgment above ſpecified; *And* alſo prays that the ſaid writ may be allowed; and by the ſame court here it is allowed to him, *&c.* which ſaid other writ follows in theſe words, to wit, *Charles* the ſecond, [*in the ſame words as the former writ.*] Witneſs Ourſelf at *Weſtminſter* the ſeventh day of *June* in the twenty-eighth year of our reign. *And* upon this the ſaid *E.* then and there in the ſame court here ſays, that in the record and proceſs aforeſaid, as alſo in giving the ſaid judgment, there is manifeſt error in this, to wit, that where by the ſaid record it appears, that he the ſaid *E.* in the term of *Eaſter* in the twenty-ſeventh year of the reign of our ſaid lord the preſent king, appeared at the ſuit of the ſaid *T. T.* in the plea aforeſaid, by *E. M.* his attorney, in the ſaid court of our ſaid lord the king, before the king himſelf now here, he the ſaid *E.* at the ſaid time of ſuch appearance of him the ſaid *E.* was within the age of twenty-one years, to wit, of the age of twenty years and ſix months, and not more, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid. In which caſe he the ſame *E.* by the law of the land of this kingdom of *England*, ought to have appeared in the ſaid plea at the ſuit of the ſaid *T. T.* by his guardian or his next friend, and not by his attorney. *Therefore* in this there is manifeſt error, and this the ſaid *E.* is ready to verify. *Wherefore* he prays the writ of our lord the preſent king to warn the ſaid *T. T.* to be before our lord

And allowed.

The writ.

Error aſſigned, that the defendant appeared by attorney, and was under the age of twenty-one years.

Sci fa. ad audiend. record. et proceſſ.

the king to hear the ſaid record and proceſs, if, &c. and it is granted to him, &c. by which it is commanded to the ſheriffs of *London*, that by good, &c. they make known to the ſaid *T. T.* that he be before our lord the king * from the day of *St. Michael* in three weeks whereſoever, &c. to hear the record and proceſs aforeſaid, if, &c. The ſame day is given to the ſaid *E.* &c. *At which day* before our lord the king at *Weſtminſter* aforeſaid, came the ſaid *E.* by his attorney aforeſaid, and the ſheriffs of *London*, namely Sir *T. S.* knt. and Sir *J. P.* knt. return that the ſaid *T. T.* has nothing in their bailiwic where or by which they are able to make known to him, nor is he found in the ſame. And he does not come. *Therefore*, as before, it is commanded to the ſame ſheriffs of *London* that by good, &c. they make known to the ſaid *T. T.* that he be before our lord the king * on the morrow of *St. Martin* whereſoever, &c. to hear the record and proceſs aforeſaid, if, &c. and further, &c. The ſame day is given to the ſaid *E.* &c. *At which day*, before our Lord the king at *Weſtminſter* aforeſaid, comes the ſaid *E.* by his attorney aforeſaid, and the ſaid ſheriffs of *London* return that the ſaid *T.* has nothing in their bailiwic where or by which they are able to make known to him, nor is he found in the ſame. *Which* ſaid *T.* according to the warning made to him in this behalf alſo comes by *R. B.* his attorney, upon which the

Return nihil.

Alias ſci. fa.

Return nihil.

Defendant in error appears.

* No ſuch return at this day.

ſaid

ſaid *E.* (as before) ſays that in the record and proceſs aforeſaid, as alſo in giving the ſaid judgment, there is manifeſt error, by alledging the error aforeſaid in form aforeſaid alledged; and prays, that the ſaid judgment for the error aforeſaid may be reverſed, and altogether held for naught; and that he may be reſtored to all things which he has loſt, by occaſion of the ſaid judgment; and that the ſaid *T.* may rejoin to the ſaid error above aſſigned, *&c.* *And* the ſaid *T. T.* ſays, that by any reaſon of the ſaid error by the ſaid *E.* above aſſigned, the ſaid judgment ought not to be reverſed, annulled, or altogether held for naught, becauſe he ſays that the ſaid *E. G.* at the time of the appearance of the ſaid *E.* at the ſuit of the ſaid *T.* in the plea aforeſaid, in the ſaid term of *Eaſter*, to wit, on *Wedneſday* the twenty-firſt day of *April* in the ſaid twenty-ſeventh year of the reign of our ſaid lord the preſent king, was of the full age of twenty-one years and more, and not within the age of twenty-one years, as the ſaid *E.* above has alledged thereupon for error, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid. And of this he puts himſelf upon the country. *And* the ſaid *E.* thereupon alſo, *&c.* *Therefore* it is commanded to the ſheriffs, that they cauſe to come before our lord the king, from the day of *St. Hilary* in fifteen days, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, *&c.*

Rejoinder that plaintiff in error was of full age.

Iſſue.

Venire facias.

Proceſs continued.

Afterwards the proceſs is thereupon continued between the parties aforeſaid, in the plea aforeſaid, by the jury between them being reſpited before our lord the king, until on the octave of *St. Hilary* whereſoever, *&c.* in the ſecond year of the reign of our ſovereign lord *James* the ſecond, king of *England*, *&c.* before which ſaid octaves of *St. Hilary* his late majeſty *Charles* the ſecond, late king of *Eng-*

Death of the king.

land, *&c.* died; unleſs Sir *E. H.* knt. chief

Niſi prius.

juſtice of our ſaid lord *James* the ſecond, now king of *England*, *&c.* aſſigned to hold pleas in the court of the ſaid lord the king, before the king himſelf, ſhall come before on *Wedneſday* the firſt day of *December*, at the *Guildhall* of the city of *London* aforeſaid, by form of the ſtatute, *&c.* for default of the jurors, *&c.* *At which day*, before our lord the king at *Weſtminſter*, the ſaid parties came by their attornies aforeſaid, and the ſaid chief juſtice, before whom, *&c.* ſent here his record before

Poſtea.

him had in theſe words, to wit, *Afterwards*, at the day and place within contained, before the king's truſty and well-beloved Sir *E. H.* knt. the chief juſtice within written having aſſociated to him *R. P.* gent. by form of the ſtatute, *&c.* comes as well the within-named *E. G.* as the within-written *T. T.* by their attornies within contained, and the jurors of the jury whereof mention is within made being demanded, ſome of them, namely, *N. D. L. B. F. B. P. H. J. P. H. W. E. F. N. B. J. P.* and *S. T.* came and were ſworn

Tales.

upon the ſaid jury; and becauſe the reſidue of the

the jurors of the ſame jury did not appear, therefore others of thoſe ſtanding around, thereunto choſen by the ſheriffs of *London* within-written, at the requeſt of the ſaid *E.* and by the command of the ſaid chief juſtice, are added anew, whoſe names are affiled in the within-written panel, according to the form of the ſtatute in ſuch caſe made and provided; and the jurors ſo added anew, namely, *T. S.* and *J. W.* being demanded, alſo came, who, to ſpeak the truth of the within-contained, together with the ſaid other jurors before impanelled and ſworn, were choſen, tried and ſworn, and retired from the bar here to diſcourſe together about giving their verdict thereupon; and having diſcourſed together, and agreed to give their verdict thereupon, came back to the bar here. *Upon which* the ſaid *E.* although ſolemnly called, came not again, nor did he further proſecute his ſaid writ againſt the ſaid *T. T. Therefore* it is conſidered, that the ſaid *T. T.* go thereupon without day, *&c.* *And* upon this afterwards, to wit, on *Monday* next after the octave of *St. Hilary* in the term of *St. Hilary* in the ſecond and third years of the reign of our ſaid lord *James* the ſecond, king of *England*, *&c.* before the ſaid lord the king at *Weſtminſter*, came the ſaid *E. G.* by *W. B.* his attorney, and brought here into the court of the ſaid lord the king then there a certain other writ, for correcting error of and upon the ſaid original judgment, directed to the juſtices of our ſaid lord the king, aſſigned to hold pleas in

Plaintiff non-ſuited.

Judgment.

Another writ of error brought.

in the court of our ſaid lord the king, before the king himſelf; *and* prays, that the ſaid writ may be allowed; and it is allowed by the ſaid court here, *&c.* which ſaid writ follows in theſe words, to wit, *James* the ſecond, [*as in the former to*] as alſo in giving of judgment of a plaint, which was in the court of the lord *Charles* the ſecond, late king of *England*, before the ſaid late king by bill, [*as in the former to*] Witneſs Ourſelf at *Weſtminſter* the twenty-fourth day of *January* in the ſecond year of our reign.

Allowed.

The writ.

Layton.

Upon which the ſaid *E.* by his ſaid attorney ſays, that in the record and proceſs aforeſaid, as alſo in giving the ſaid judgment, there is manifeſt error in this, to wit, that where by the ſaid record it appears, that the ſaid *E.* in the term of *Eaſter* in the twenty-ſeventh year of the reign of the lord *Charles* the ſecond, late king of *England*, *&c.* appeared at the ſuit of the ſaid *T. T.* in the ſaid plea, by *E. M.* his attorney, in the ſaid court of the ſaid late king, before the ſaid late king, he the ſaid *E.* at the ſaid time of ſuch appearance of him the ſaid *E.* was within the age of twenty-one years, to wit, of the age of twenty years, and not more, to wit, * at the city of *Exeter*, in the county of the ſaid city: In which caſe, he the ſaid *E.* by the law of the land of this kingdom of *England*, ought to have appeared in the ſaid plea at the ſuit of the ſaid *T. T.* by his

Error aſſigned as before.

* Note; the venue now laid at Exeter, before at London.

his guardian, or by his next friend, and not by his attorney. Therefore in that there is manifeſt error. And this the ſaid *E.* is ready to verify. *Wherefore* he prays the writ of the lord the preſent king to warn the ſaid *T. T.* to be before our lord the king to hear the ſaid record and proceſs, if, *&c.* and it is granted to him, *&c.* by which it is commanded to the ſheriffs of *London*, that by good, *&c.* they make known to the ſaid *T. T.* that he be before our lord the preſent king from *&c.* to hear the ſaid record and proceſs, if, *&c.* The ſame day is given to the ſaid *E. &c.* Scire facias ad audiend. record. et proceſſ.

Jo. Tremayne.

At which day, before the lord the king at *Weſtminſter*, came the ſaid *E.* by his attorney aforeſaid, and the ſaid ſheriffs of *London*, namely, Sir *T. F.* knt. and Sir *T. R.* knt. return that the ſaid *T. T.* has nothing in their bailiwic, where or by which they can make known to him, neither is he found in the ſame, and he does not come. *Therefore*, as before, it is commanded to the ſaid ſheriffs of *London*, that by good, *&c.* they make known to the ſaid *T. T.* that he be before our lord the king from the day of *Eaſter* in five weeks whereſoever, *&c.* to hear the record and proceſs aforeſaid, if, *&c.* And further, *&c.* The ſame day is given to the ſaid *E. &c.* *At which day*, before our lord the king at *Weſtminſter*, Return nihil. Alias ſci. fa. Return nihil.

ſter, came the ſaid *E.* by his attorney aforeſaid, and the ſheriffs of *London*, to wit, Sir *T. F.* knt. and Sir *T. R.* knt. as before, return that the ſaid *T. T.* has nothing in their bailiwic, where or by which they can make known to him, neither is he found in the ſame. And he on the fourth day of the plea ſolemnly called came not, but made default. *But* becauſe the court of our lord the king now here is not yet adviſed about giving their judgment of and upon the premiſſes, day is thereupon given to the ſaid *E.* before our lord the king, until on the morrow of the *Holy Trinity*, whereſoever, *&c.* to hear their judgment thereupon, for that the court of our ſaid lord the king here is not yet, *&c.* The ſame day is given to the ſaid *E. &c.*

Continuance.

Error coram nobis brought.

Afterwards, to wit, on the twenty-eighth day of *November* in the third year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, *&c.* (before which day the lord *George* late king of *Great Britain*, *&c.* departed this life) before the ſaid lord *George* the ſecond at *Weſtminſter*, come *Mary Tyler* by *Edward Halſted* her attorney, And *Nathaniel King* being an infant under the age of twenty-one years, by *Edward Sparkes* his guardian, by the court of our lord the preſent king here ſpecially admitted, and bring here into the court of the ſaid lord the preſent king, a certain writ of the ſame lord the preſent king for correcting errors of and upon the premiſſes aforeſaid; and pray that the ſaid writ by the court of our lord the preſent king

king may be allowed; and by the ſame court here it is allowed: Which ſaid writ follows in theſe words, to wit; *George, &c.* [the writ of *Error*] upon which the ſaid *Mary Tyler* and *Nathaniel King* ſay, that in the record and proceedings aforeſaid, and alſo in giving the ſaid judgment, there is manifeſt error in this, that is to ſay, that by the record aforeſaid it appears, that the ſaid *John Long*, on *Friday* next after the morrow of the *Holy Trinity* in the ſaid term of the *Holy Trinity* in the tenth year of the reign of our lord *George* the firſt, late king of *Great Britain*, *&c.* came before the ſaid late king *George* the firſt at *Weſtminſter* aforeſaid, by *Richard Cromwell* his attorney, and brought into the ſaid court of the ſaid late king before the ſaid late king his bill againſt the ſaid *Mary Tyler* and *Nathaniel King* in form aforeſaid in the plea aforeſaid; And that the ſaid *Mary Tyler* and *Nathaniel King*, on the ſaid *Friday* next after the morrow of the *Holy Trinity* in the ſaid term of the *Holy Trinity*, alſo came into the ſame court of the ſaid late king before the ſaid late king, by the ſaid *Adrian Moore* their attorney, and defended the force and injury, when, *&c.* and ſaid, that they were not guilty of the ſaid treſpaſs and ejectment of farm as the ſaid *John Long* above complained againſt them: And of this they put themſelves upon the country; and it was in ſuch manner in the ſame court of the ſaid late king before the ſaid late king proceeded in the plea aforeſaid, that the ſaid judgment in form aforeſaid was given againſt them

Allowed.

Error aſſigned that one of the plaintiffs in error and defendants in the original action was an infant, and appeared by attorney and not by guardian.

them the ſaid *Mary Tyler* and *Nathaniel King*. And the ſaid *Mary Tyler* and *Nathaniel King* ſay, that he the ſaid *Nathaniel King*, on the ſaid *Friday* next after the morrow of the *Holy Trinity* in the ſaid term of the *Holy Trinity* in the ſaid tenth year of the reign of the ſaid late king *George* the firſt, and at the ſaid time of the appearance of them the ſaid *Mary Tyler* and *Nathaniel King* in the ſaid court of the ſaid late king before the ſaid late king, by *Adrian Moore* their attorney made, and alſo at the time of rendering the ſaid judgment in form aforeſaid, was within the age of twenty and one years, to wit, at the pariſh of *St. Thomas the Apoſtle* in the county of the city of *Briſtol* aforeſaid; in which caſe the ſaid *Nathaniel King* ought to have come and pleaded by his guardian and not by his attorney, in manner and form aforeſaid: Therefore in this there is manifeſt error, and this they are ready to verify; And they pray that the ſaid judgment, for that error being in the ſaid record and proceſs, may be reverſed, annulled and intirely held for nothing; and that they may be reſtored to all that they have loſt by occaſion of the ſaid judgment, *&c.* And the ſaid *Mary* and *Nathaniel* pray the writ of our ſaid lord the king to be directed to the ſheriff of the city of *Briſtol*, to ſummon the ſaid *John Long* to be before our lord the king to hear the ſaid record and proceſs: And it is granted, and by which ſaid writ it is commanded to the ſheriff of the ſaid city of *Briſtol*, that by good, *&c.* of his bailiwic he make known to the ſaid *John Long* that he be before our lord

Scire fa. prayed.

lord the king at *Weſtminſter* on *Friday* next after the octave of *St. Hilary*, to hear the ſaid record and proceſs, if, &c. And further, &c. The ſame day is given to the ſaid *Mary* and *Nathaniel* at the ſame place, &c. At which day before our lord the king at *Weſtminſter* came the ſaid *Mary* by her attorney aforeſaid, and the ſaid *Nathaniel King* by his guardian aforeſaid; And the ſheriff of the city of *Briſtol* aforeſaid did not ſend thereupon the ſaid writ, nor do any thing thereupon: *Therefore* as at firſt it is commanded to the ſheriff of the city of *Briſtol* aforeſaid, that by good, &c. of his bailiwic he make known to the ſaid *John*, that he be before our lord the king at *Weſtminſter* on *Wedneſday* next after fifteen days of *Eaſter*, to hear the record and proceſs aforeſaid, if, &c. and further, &c. The ſame day is given to the ſaid *Mary* and *Nathaniel* at the ſame place, &c. At which day before our lord the king at *Weſtminſter* came the ſaid *Mary* by her attorney aforeſaid, and the ſaid *Nathaniel* by his guardian aforeſaid; And the ſheriff of the ſaid city of *Briſtol* did not ſend thereupon the ſaid writ, nor did he do any thing thereupon: Therefore as at firſt it is commanded to the ſheriff of the ſaid city of *Briſtol*, that by good, &c. of his bailiwic he make known to the ſaid *John*, that he be before our lord the king at *Weſtminſter*, on *Friday* next after three weeks of the *Holy Trinity*, to hear the record and proceſs aforeſaid, if, &c. and further, &c. The ſame day is given to the ſaid *Mary* and *Nathaniel* at the ſame place, &c. At which day before our lord the king at

Vic. non miſit breve.

Alias ſci. fa.

Vic. non miſit breve.

Plur. ſci. fa.

at *Weſtminſter* came the ſaid *Mary Tyler* by her attorney aforeſaid, and the ſaid *Nathaniel King* by his guardian aforeſaid: And the ſheriff of the city of *Briſtol* aforeſaid did not ſend thereupon the ſaid writ, nor did he do any thing thereupon: Therefore as at firſt it is commanded to the ſheriff of the ſaid city of *Briſtol*, that by good, &c. of his bailiwic, &c. he make known to the ſaid *John* that he be before our lord the king at *Weſtminſter* on * *Friday* next after three weeks of *S. Michael*, to hear the record and proceſs aforeſaid, if, &c. and further, &c. The ſame day is given to the ſaid *Mary* and *Nathaniel* at the ſame place, &c. At which day before our lord the king at *Weſtminſter* came the ſaid *Mary* by her attorney aforeſaid, and the ſaid *Nathaniel* by his guardian aforeſaid: And the ſaid *John* by *Richard Cromwell* his attorney comes freely here into court and ſays, that by any thing by the ſaid *Mary* and *Nathaniel King* above for error aſſigned, the ſaid judgment ought not to be reverſed or annulled, becauſe he ſays that the ſaid *Nathaniel*, on the ſaid *Friday* next after the morrow of the Holy *Trinity* in the ſaid term of the Holy *Trinity*, in the ſaid tenth year of the reign of the ſaid late king *George* the firſt, and at the time of the appearance of them the ſaid *Mary* and *Nathaniel King* in the ſaid court of the ſaid late king before the ſaid late king, by *Adrian Moore* their attorney, and

Vic. non miſit breve.

Plur. ſci. fa.

Defendant in error appears, and ſays that the ſaid plaintiff in error was of full age.

* No ſuch return. See *Vol.* 1. *p.* —.

alſo

alſo at the time of giving the ſaid judgment in form aforeſaid, was of the full age of twenty and one years and more, and not under age in manner and form as the ſaid *Mary Tyler* and *Nathaniel King* have above alledged: And of this he puts himſelf upon the country; and the ſaid *Mary* and *Nathaniel* likewiſe: Therefore let a jury come thereupon before our lord the king at *Weſtminſter* on *Saturday* next after the octave of St. *Hilary*, who neither, *&c.* to recogniſe, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid at the ſame place, *&c.* At which day before our lord the king at *Weſtminſter* came as well the ſaid *Mary* by her attorney aforeſaid, and the ſaid *Nathaniel* by his ſaid guardian, as the ſaid *John* by his attorney aforeſaid; And the ſheriffs of the county of the city aforeſaid did not ſend thereupon the ſaid writ, nor did they do any thing thereupon: Therefore as at firſt let a jury thereupon come before the lord the king at *Weſtminſter* on *Wedneſday* next after fifteen days of *Eaſter*, and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, at the ſame place, *&c.* At which day before our lord the king at *Weſtminſter* came as well the ſaid *Mary* by her attorney aforeſaid, and the ſaid *Nathaniel* by his guardian aforeſaid, as the ſaid *John* by his attorney aforeſaid; And the ſheriffs of the county of the ſaid city did not ſend thereupon the ſaid writ, nor did they do any thing thereupon: Therefore as at firſt let a jury come thereupon before

Iſſue. Ven. fac.

Vic. non miſed fer' breve.

Alias Ven. fa.

Vic. non miſer breve.'

Plur. Ven. fa.

gur lord the king at *Weſtminſter* on *Wedneſday* next after three weeks of the Holy *Trinity*, and who neither, &c. to recognize, &c. becauſe as well, &c. The ſame day is given to the parties aforeſaid at the ſame place, &c. At which day before our lord the king at *Weſtminſter* came as well the ſaid *Mary* by her attorney aforeſaid, and the ſaid *Nathaniel* by his guardian aforeſaid, as the ſaid *John* by his attorney aforeſaid; And the ſheriffs of the city of *Briſtol* aforeſaid to wit, *Edward Buckley*, eſq; and *William Barnſdale*, eſq; return the ſaid writ in all things ſerved and executed, together with a panel of the names of the jury annexed to the ſaid writ, of whom none, &c. Therefore it is commanded to the ſheriffs of the city of *Briſtol* aforeſaid, that they diſtrain the ſaid jurors by all their lands, &c. and that of the iſſues, &c. ſo that they may have their bodies before the ſaid lord the king at *Weſtminſter* * on *Saturday* next after three weeks of *St. Michael*, or before the juſtices of the ſaid lord the king aſſigned to take the aſſizes in the county of the city of *Briſtol* aforeſaid, if they ſhall firſt come, on *Saturday* the 20th day of *Auguſt* at the *Guildhall* of the city of *Briſtol* aforeſaid in the county of the ſame city, by the form of the ſtatute, &c. for default of the jurors, &c. Therefore let the ſheriffs have the bodies, &c. The ſame day is given to the parties aforeſaid there, &c.

Returned executed.

Jury makes default.

Diſtringas jur.

* No ſuch return. See *Vol.* 1. *p.* —.

And

And be it known that the writ of the ſaid lord the king thereupon, on the ſeventh day of *July* in the ſame term before the lord the king at *Weſtminſter*, is delivered of record to the deputy of the ſheriffs of the county of the city of *Briſtol* aforeſaid, to be executed in form of law at their peril, *&c.* Le ſciendum.

Afterwards, to wit, on the day and place within contained, before *Edward Foy*, eſq; mayor of the city of *Briſtol*, and Sir *Francis Page*, knt. one of the juſtices of the lord the king aſſigned to hold pleas before the lord the king, juſtices of the ſaid lord the king aſſigned to take the aſſizes within the county of the ſaid city, by form of the ſtatute, *&c.* came as well the within named *Mary Tyler* by her attorney laſt within mentioned, and the within written *Nathaniel King* by his guardian within written, as the within-named *John Long* by his attorney within-named; And the jurors of the jury, whereof mention is within made, being ſolemnly demanded, to wit, *J. R. G. S. &c.* came and were ſworn on that jury; who, to ſpeak the truth of the premiſſes within contained, being choſen, tried and ſworn, ſay, upon their oath, that the ſaid *Nathaniel* on the within-written *Friday* next after the morrow of the Holy *Trinity* in term of the Holy *Trinity* in the tenth year of the reign of the lord late king *George* the firſt, and on the within-written time of the appearance of the ſaid *Mary Tyler* and *Nathaniel King* in the court of the ſaid late king before the ſaid late king, by *Adrian Moore* his attorney made, and alſo on the within-written time of giving the The poſtea. Verdict for the plaintiff in error, that he was under age.

the judgment within ſpecified in form within mentioned, was within the age of twenty and one years, in manner and form as the ſaid *Mary* and *Nathaniel* have within for error aſſigned: But becauſe the court of our ſaid lord the king now here is not yet adviſed of giving their judgment of and upon the premiſſes, day thereupon is given to the parties aforeſaid before our lord the king at *Weſtminſter*, until next after to hear their judgment of and upon the premiſſes, for that the court of the ſaid lord the king now here is not yet, *&c.*

Continuance by Cur. adviſar. vult.

N. B. The *poſtea* was produced in court and read, and then the ſenior judge, after the chief juſtice had declared that the judgment muſt be reverſed, ſaid in *French* as follows:

Pour les errors aſſign et pour les auters errors apparent ſoit le judgement reverſe et le party ſoit reſtituer a tout qu'il a perdu. In *Engliſh*: *Let the judgment be reverſed for the errors aſſigned, and the party reſtored to all he hath loſt.* Which was done in this caſe by *Probyn J. abſente Page J.*

Pleas

Pleas in the Exchequer *chamber at* Weſtminſter *before Sir* J. E. *knt. Sir* B. H. *knt. and Sir* R. P. *knt. three of the barons of the* Exchequer *of our ſovereign lord the king, of the degree of the coif, on* Saturday *the thirteenth day of* May *in the fifteenth year of the reign of king* George *the third*, &c.

Entry of a writ of error returnable in the Exchequer chamber. Lill.Ent.213.

OUR ſovereign lord the king hath ſent to his truſty and well-beloved *W.* lord *M.* his majeſty's chief juſtice appointed to hold pleas in his majeſty's court, before the king himſelf, his writ cloſed in theſe words, to wit, *George* the third, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, &c. To our truſty and well-beloved *W.* lord *M.* our chief juſtice appointed to hold pleas before us, greeting. Whereas by the ſtatute made in the parliament holden at *Weſtminſter* the twenty third day of *November* in the twenty-ſeventh year of the reign of the lady *Elizabeth*, late queen of *England*, it was, by the authority of the ſame parliament (amongſt other things) enacted, that when any judgment at any time thereafter ſhould be given in the court of *King's Bench* in any ſuit or action of debt, detinue, covenant, account, action upon the caſe, ejectment or treſpaſs firſt commenced

or to be commenced there, other than ſuch only where we ſhould be a party, the plaintiff or the defendant againſt whom ſuch judgment ſhould be given, may at his election ſue forth out of the court of *Chancery* a ſpecial writ of error to be deviſed in the ſaid court of *Chancery*, directed to the chief juſtice of the ſaid court of *King's Bench* for the time being, commanding him to cauſe the record, and all things touching the ſaid judgment, to be brought before the juſtices of the *Common Bench* and the barons of the *Exchequer* into the *Exchequer* chamber, there to be examined by the ſaid juſtices of the *Common Bench* and barons aforeſaid, which ſaid juſtices of the *Common Bench*, and ſuch barons of the *Exchequer*, as are of the degree of the coif, or ſix of them at the leaſt, by virtue of the ſaid act ſhall thereupon have full power and authority to examine all ſuch errors as ſhall be aſſigned or found in or upon ſuch judgment, and thereupon to reverſe or affirm the ſaid judgment as the law ſhall require, other than for errors to be aſſigned or found for or concerning the juriſdiction of the ſaid court of *King's Bench*, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, proceſs, verdict or proceeding whatſoever; and that after the ſaid judgment ſhall be affirmed or reverſed, the ſaid record, and all things touching the ſame, ſhall be removed and brought back into the ſaid court of *King's Bench*, that ſuch further proceedings may be made thereupon as well for execution as otherwiſe, as ſhall appertain,

as

as in the ſaid ſtatute is more fully contained, and foraſmuch as in the record and proceſs, as alſo in giving of judgment in a plaint which was before us by bill between *S. C.* and *J. S.* eſq; of a certain treſpaſs and aſſault done to the ſaid *S.* by the ſaid *J.* as it is ſaid, manifeſt error hath intervened, to the great damage of the ſaid *J.* as by his complaint we are informed, which ſaid error no ways toucheth us or the juriſdiction of the ſaid court of the ſaid bench, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, proceſs, verdict or proceeding whatſoever, as we are informed; We therefore, willing that the ſaid error, if any, be duly amended according to the form of the ſaid ſtatute, and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that if judgment be given thereupon, that then you cauſe the record and proceſs aforeſaid, with all things touching the ſame, to come before the ſaid juſtices of the *Common Bench*, and barons of our ſaid *Exchequer*, into our *Exchequer* chamber on *Saturday* the thirteenth day of *May* next enſuing, that the ſaid juſtices and barons, viewing and examining the record and proceſs aforeſaid, may cauſe further to be done therein as of right and according to the form of the ſaid ſtatute ſhall be meet to be done. Witneſs Ourſelf at *Weſtminſter* the twenty-ſixth day of *April* in the fifteenth year of our reign.

The anſwer of W. *lord* M. *knt. chief juſtice within named.*

The return of the writ of error.

THE record and proceſs of the plaint, whereof mention within is made, with all things touching the ſame, to the juſtices and barons within ſpecified, at the day and place within contained, I certify in a certain ſchedule to this wit annexed, as to me is within commanded.

Mansfield.

The tranſcript.

Pleas before our lord the king at Weſtminſter, *of the term of St.* Michael *in the fifteenth year of the reign of our ſovereign lord* George *the third, by the grace of God, of* Great Britain, France *and* Ireland, *king, defender of the faith, and in the year of our Lord* 1775.

Roll 482.

Warrant of attorney for the plaintiff.

London. S. C. puts in his place *A. S.* his attorney, againſt *J. S.* eſq; of a plea of treſpaſs, aſſault and impriſonment.

For the defendant.

London. *J. S.* eſq; puts in his place *R. C.* his attorney, againſt *S. C.* in the plea aforeſaid.

London.

London. Be it remembered, that on *Monday* next after three weeks of *St. Michael* in this ſame term, before the lord the king at *Weſtminſter*, comes *S. C.* by *A. S.* his attorney, and brings here in the court of the ſaid lord the king now here his certain bill againſt *J. S.* eſq; in the cuſtody of the marſhal, *&c.* of a plea of treſpaſs, aſſault and impriſonment; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words: *London*, *S. C.* complains of *J. S.* eſq; in the cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lord the king, before the king himſelf; *For that* the ſaid *J. S.* on the twenty-ninth day of *May* in the year of our Lord 1775, at *Gibralter*, to wit, at *London* in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, with force and arms, to wit, with ſtaves, ſwords and whips, made an aſſault upon the ſaid *S.* and beat, wounded and treated him ill, and without any reaſonable cauſe, and againſt the law of *England*, impriſoned the ſaid *S.* and kept and detained him in priſon there for a long time, to wit, for the ſpace of twenty days, and tied the ſaid *S.* to a publick whipping poſt, and with whips ſtruck divers, to wit, three hundred ſtrokes or laſhes upon the naked body of the ſaid *S.* and kept and confined the ſaid *S.* ſo whipt and wounded in priſon for a long time, to wit, for the ſpace of two months, whereby the ſaid *S.* during all that time underwent great pain and hardſhip, and was in danger of loſing his life, and alſo was hindered from uſing and exerciſing his employment

Memorandum of the ſame term.

Declaration on an action brought by a maſter carpenter of the office of ordnance againſt General S. governor of Gibraltar, for cauſing the plaintiff to be tried by a court marſhal there, to which not ſubject, and to undergo the ſentence thereof, viz. to receive 300 laſhes, and to leave his place and his employment.

ment and buſineſs of a carpenter, and from acquiring thereby large ſums of money; *And alſo* that the ſaid *J. S.* afterwards, to wit, on the ſecond day of *Auguſt* in the year aforeſaid, at *Gibralter* aforeſaid, to wit, at *London* in the pariſh and ward aforeſaid, with force and arms, *&c.* againſt the will of the ſaid *S.* compelled and forced the ſaid *S.* to depart from and leave *Gibralter* aforeſaid; by reaſon whereof the ſaid *S.* was not only put to great expence and trouble, and the goods and effects of the ſaid *S.* there, of the value of five hundred pounds, were diminiſhed, loſt and conſumed, and the family of the ſaid *S.* there brought to want and great diſtreſs; but alſo the ſaid *S.* was totally deprived of proceeding in and exerciſing the buſineſs of a maſter carpenter of the office of ordnance at *Gibraltar* aforeſaid, in which he was retained and employed; and then and there did other injuries to the ſaid *S.* againſt the peace of the preſent king, and to the damage of the ſaid *S.* ten thouſand pounds; and therefore he brings ſuit, *&c.*

Plea. *And* the ſaid *J.* by *R. C.* his attorney, comes and defends the force, injury and damages, and whatever elſe he ought to defend, when and where the court will take the ſame

Not guilty. into conſideration; and ſaith, that he is no wiſe guilty of the premiſſes above laid to his charge, as the ſaid *S.* above complains againſt him; and of this he puts himſelf upon his

Iſſue. country; *and* the ſaid *S.* likewiſe, *&c. There-*

Venire awarded. *fore* let a jury come thereupon before the lord the king at *Weſtminſter* on *Monday* next after

after fifteen days of *St. Martin*, and who neither, *&c.* to recognize, *&c.* becauſe as well *&c.* The ſame day is given to the parties aforeſaid there, *&c.*

At which day before the lord the king at *Weſtminſter* came the parties aforeſa d by their attornies aforeſaid, and the ſheriffs did not ſend the writ, nor did they do any thing thereupon: *Therefore*, as before, let a jury come before the lord the king at *Weſtminſter* on *Monday* next after the octave of the purification of the bleſſed virgin *Mary*, and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid there, *&c.* *Afterwards* the proceſs is thereupon continued between the parties aforeſaid, of the plea aforeſaid, by the jury between them being reſpited before our lord the king at *Weſtminſter*, until *Wedneſday* next after 15 days of *Eaſter* day then next following, unleſs the king's right truſty and well-beloved *W.* lord *M.* chief juſtice of our lord the king, aſſigned to hold pleas in the court of our ſaid lord the king, before the king himſelf, ſhall firſt come on *Wedneſday* the 15th day of *February* at the *Guildhall* of the city of *London* aforeſaid, by form of the ſtatute, *&c.* for default of the jurors, *&c.* *At* which day before our lord the king at *Weſtminſter* came the ſaid *S. C.* by *A. S.* his attorney aforeſaid, and the ſaid chief juſtice, before whom, *&c.* ſent here his record before him had in theſe words, to wit, *Afterwards* at the day and place within contained, before *W.* lord *M.* chief juſtice within named, having

Continuance by vic. non miſit breve.

Proceſs continued.

Poſtea.

having aſſociated to him *J. W.* gent. by form of the ſtatute, *&c.* came the within named *S. C.* by his attorney within named, and the within named *J. S.* eſq; although ſolemnly required, came not, but made default: *Therefore* let the jurors of the jury within mentioned be taken againſt him by default; and the jurors of that jury being ſummoned came, who to ſay the truth of the within contents being choſen, tried and ſworn, ſay upon their oaths, that the ſaid *J. S.* is guilty of the premiſſes within laid to his charge, in manner and form as the ſaid *S.* within complains againſt him, and aſſeſs the damages of the ſaid *S.* by reaſon of the premiſſes within mentioned, over and above his coſts and charges by him about his ſuit in this behalf expended, to ſeven hundred pounds, and for thoſe coſts and charges to forty ſhillings; *Therefore* it is conſidered, that the ſaid *S. C.* recover againſt the ſaid *J. S.* his ſaid damages by the ſaid jury in form aforeſaid aſſeſſed, and alſo ninety-four pounds for his ſaid coſts and charges, by the court of our ſaid lord the king now here adjudged of increaſe to the ſaid *S.* by his aſſent, which damages amount in the whole to ſeven hundred and ninety-ſix pounds.

Verdict for the plaintiff by default.

Judgment ſigned the 5th of *May*. 15 Geo. 3.

And thereupon came here into court in the ſaid *Exchequer* chamber the ſaid *J. S.* in his proper perſon, and prays a day to aſſign error or errors in the record and proceedings aforeſaid; upon which a day is here given to him by this court to aſſign error or errors in the record and proceedings aforeſaid, until *Friday* the ninth day of *June* next, *&c.*

Day given to aſſign errors.

Pleas

Pleas in the Exchequer *chamber at* Weſtminſter *before Sir* J. E. *knt. Sir* J. B. *knt. and Sir* B. H. *knt. three of the barons of the* Exchequer *of our ſovereign lord the king of the degree of the coif, on* Friday *the ninth day of* June *in the fifteenth year of the reign of king* George *the third*, &c.

And upon this came here into court in the ſaid *Exchequer* chamber the ſaid *J. S.* in his proper perſon, and ſaith, that in the record and proceedings aforeſaid, and alſo in giving the ſaid judgment, it is manifeſtly erroneous in this, (that is to ſay) That whereas by the record aforeſaid the judgment aforeſaid in form aforeſaid given, was given for the ſaid *S. C.* againſt him the ſaid *J. S.* whereas by the law of the land the ſaid judgment ought to have been given for the ſaid *J. S.* againſt the ſaid *S. C.* and therefore in that it is manifeſtly erroneous, and prays a writ to be directed to the ſheriffs of *London* to give notice to the ſaid *S. C.* to be here to hear the record and proceedings aforeſaid; and it is granted to him; *Therefore* it is commanded unto the ſaid ſheriffs, that by good men they give notice unto the ſaid *S. C.* that he may be here on *Wedneſday* the eighth day of *November* next, &c. General errors aſſigned. Scire facias; prayed; and awarded.

Pleas in the Exchequer *chamber at* Weſtminſter *before Sir* S. S. S. *knt. chief baron of the* Exchequer *of our ſovereign lord the king, of the degree of the coif, Sir* J. E. *knt. and Sir* B. H. *knt. two other of the barons of the* Exchequer *of our ſovereign lord the king, of the degree of the coif, on* Wedneſday *the eighth day of* November

vember *in the fifteenth year of the reign of king* George *the third*, &c.

Parties appear.

At which day came here into court in the ſaid *Exchequer* as well the ſaid *J. S.* in his proper perſon, as the ſaid *S. C.* in his proper perſon, and the ſheriffs did not ſend the writ aforeſaid, nor did any thing thereupon; and therefore the ſaid *J. S.* as at firſt ſaith, that in the record and proceedings aforeſaid, and alſo in giving the ſaid judgment, there is manifeſt error aſſigned, by alledging the error aforeſaid by him above for error aſſigned and alledged, and deſireth that the judgment (by reaſon of theſe errors and others being in the record and proceedings aforeſaid) may be reverſed, annulled, and made void, *&c.*

Vic. non miſ. breve.

Joinder in error.

And the ſaid *S. C.* ſaith, that neither in the record and proceedings aforeſaid, nor in giving the judgment aforeſaid, is any thing erroneous, and deſireth alſo that the court of our lord the king here may proceed to the examination as well of the record and proceedings aforeſaid, as the aforeſaid cauſe by the aforeſaid *J. S.* above aſſigned for error, and that the judgment aforeſaid may be affirmed in all things: *But* becauſe the court of our lord the king are willing to adviſe on the premiſſes before judgment be thereupon given, a day is here given to the ſaid parties until *Wedneſday* the thirty-firſt day of *January* next, *&c.*

Continuance by cur' adviſari vult.

Warrant of attorney for plaintiff in error.

J. S. eſq; puts in his place *R. S.* his attorney, againſt *S. C.* in a plea of correcting errors.

S. C.

S. C. puts in his place *A. S.* his attorney, against *J. S.* esq; in a plea of correcting errors. For defendant.

Pleas in the Exchequer *chamber at* Weſtminſter *before Sir* W. De G. *knt. chief juſtice of the* Common Bench *of our ſovereign lord the king, Sir* S. S. S. *knt. chief baron of the* Exchequer *of our ſovereign lord the king, of the degree of the coif, Sir* H. G. *knt. Sir* W. B. *knt. two other of the juſtices of the* Common Bench *of our ſovereign lord the king, and alſo before Sir* J. E. *knt. Sir* J. B. *knt. and Sir* B. H. *knt. the three other barons of the* Exchequer *of our ſovereign lord the king, of the degree of the coif, on* Wedneſday *the thirty-firſt day of* January *in the fifteenth year of the reign of king* George *the third.*

At which day came here into court in the ſaid *Exchequer* chamber, as well the ſaid *J. S.* as the ſaid *S. C.* by their attornies aforeſaid; upon which the premiſſes being conſidered, as well the record and proceedings aforeſaid, and the judgment aforeſaid on the ſame given, the cauſes aforeſaid for error aſſigned being by the court of our lord the king here diligently examined and fully underſtood, it ſeemeth unto the ſaid court of our lord the king here, that the judgment aforeſaid is not in any wiſe vitious or defective, and that in the ſaid record there is not any thing erroneous: Therefore it is conſidered by the ſaid court of our lord the king, that the judgment aforeſaid in all things be affirmed, and ſo ſtand in its full ſtrength and effect (the ſaid cauſe above for error aſſigned and alledged in any thing notwith- Judgment affirmed.

Costs occasione dilationis executionis.

withſtanding): And it is further conſidered, that the ſaid *S. C.* do recover againſt the ſaid *J. S.* ten pounds and ten ſhillings being adjudged to the ſaid *S. C.* at his requeſt by the court of our lord the king here for his damages, coſts and charges, which he hath expended by reaſon of the delay of the execution of the ſaid judgment, and by the proſecution of the ſaid writ of error: Whereupon the record and proceedings aforeſaid of the ſaid juſtices of the *Common Bench* and the ſaid barons before them had in the premiſſes, by the ſaid juſtices and barons before our lord the king, whereſoever, *&c.* are remitted according to the form of the ſtatute of the twenty-ſeventh year of the late queen *Elizabeth.*

Record remitted.

Pleas

Pleas in the Exchequer *chamber at* Weſtminſter *before Sir* J. W. *knt. chief juſtice of the common bench of our ſovereign lord the king, Sir* J. F. A. *knt.* T. P. *eſq; and* T. B. *eſq; the three other juſtices of the common bench of our ſovereign lord the king, and alſo before Sir* L. C. *knt.* J. R. *eſq; and Sir* T. A. *knt. three of the barons of the* Exchequer *of our ſovereign lord the king, of the degree of the* coif, *on* Friday *the twenty-fifth day of* June *in the ſixteenth year of the reign of king* George *the ſecond*, &c.

Entry of a writ of error returned in the Exchequer chamber on a judgment given in B. R.

OUR ſovereign lord the king hath ſent to his truſty and well-beloved Sir *W. L.* knt. his majeſty's chief juſtice appointed to hold pleas in his ſaid majeſty's court, before the king himſelf, his writ cloſed in theſe words, to wit, *George* the ſecond, *&c.* To our truſty and well-beloved Sir *W. L.* knt. our chief juſtice appointed to hold pleas before us, greeting. Whereas by the ſtatute made in the parliament holden at *Weſtminſter* the twenty-third day of *November* in the twenty-ſeventh year of the reign of the lady *Elizabeth*, late queen of *England*, it was by the ſame parliament enacted, That when any judgment at any time then after ſhould be given in the court of *King's Bench* in any ſuit or action of debt, detinue covenant, account, action

upon the caſe, ejectment or treſpaſs, firſt commenced or to be commenced there, other than only where we ſhould be a party, the plaintiff or the defendant againſt whom ſuch judgment ſhould be given, may at his election ſue forth out of the court of *Chancery* a ſpecial writ of error to be deviſed in the ſaid court of *Chancery*, directed to the chief juſtice of the ſaid court of *King's Bench* for the time being, commanding him to cauſe the record, and all things touching the ſaid judgment, to be brought before the juſtices of the common bench and the barons of the *Exchequer* into the *Exchequer* chamber, there to be examined by the ſaid juſtices of the common bench and barons aforeſaid, which ſaid juſtices of the *Common Bench*, and ſuch barons of the *Exchequer* as are of the degree of the coif, or ſix of them at the leaſt, by virtue of the ſaid act ſhall thereupon have full power and authority to examine all ſuch errors as ſhall be aſſigned or found in or upon ſuch judgment, and thereupon to reverſe or affirm the ſaid judgment as the law ſhall require, other than for errors to be aſſigned or found for or concerning the juriſdiction of the ſaid court of *King's Bench*, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, proceſs, verdict or proceeding whatſoever; and that after the ſaid judgment ſhall be affirmed or reverſed, the ſaid record, and all things touching the ſame, ſhall be brought back into the ſaid court of *King's Bench*, that ſuch further proceedings may be made thereupon as well for execution

cution as otherwiſe, as ſhall appertain, as in the ſaid ſtatute is more fully contained. *And* foraſmuch as in the record and proceſs, as alſo in giving of judgment in a plaint which was before us by bill between *J. T.* and *J. S.* gent. *T. S.* and *R. S.* of a certain treſpaſs, aſſault, and impriſonment, done to the ſaid *J. T.* by the ſaid *J. S. T.* and *R.* as it is ſaid, manifeſt error hath intervened, to the great damage of the ſaid *J. S. T.* and *R.* as by their complaint we are informed, which ſaid error no ways toucheth us or the juriſdiction of the ſaid court of the ſaid bench, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, proceſs, verdict or proceeding whatſoever, as we are informed: *We* therefore, willing that the ſaid error, if any be, be duly amended according to the form of the ſaid ſtatute, and full and ſpeedy juſtice done to the ſaid parties in this behalf, *Do* command you, that if judgment be given thereupon, that then you cauſe the record and proceſs aforeſaid, with all things touching the ſame, to come before the ſaid juſtices of the *Common Bench*, and barons of our ſaid *Exchequer*, into our ſaid *Exchequer* chamber on *Friday*, to wit, on the twenty-fifth day of *June* next enſuing, that the ſaid juſtices and barons, viewing and examining the record and proceſs aforeſaid, may cauſe further to be done therein as of right and according to the form of the ſaid ſtatute ſhall be meet to be done. Witneſs Ourſelf at *Weſtminſter* the thirty-firſt day of *May* in the fifteenth year of our reign.

The record and proceedings, and all things concerning the ſame of which mention is made in the above writ, follow in theſe words:

Pleas before our lord the king at Weſtminſter *of the term of* St. Hilary, *in the fifteenth year of the reign of our ſovereign lord* George *the ſecond, by the grace of God, of* Great Britain, France *and* Ireland, *king, defender of the faith, and in the year of our Lord one thouſand ſeven hundred and forty-one.* Roll 899.

Warrant of attorney for the plaintiff.

Kent, ff. J. T. puts in his place *J. C.* his attorney, againſt *J. S.* gent. *T. S. R. S.* and *M. L.* of a plea of treſpaſs, aſſault and impriſonment.

Warrant of attorney for the firſt defendant.

Kent, ff. J. S. gent. puts in his place *D. G.* his attorney, at the ſuit of the ſaid *J. T.* in the plea aforeſaid.

Warrant of attorney for the ſecond defendant.

Kent, ff. T. S. puts in his place *T. M.* his attorney, at the ſuit of the ſaid *J. T.* in the plea aforeſaid.

Third defendant in perſon.

Kent, ff. R. S. in perſon at the ſuit of the ſaid *J. T.* in the plea aforeſaid.

Warrant of attorney for the fourth defendant.

Kent, ff. M. L. puts in his place *R. B.* his attorney, at the ſuit of the ſaid *J. T.* in the plea aforeſaid.

Memorandum of a bill of the ſame term.

Kent, ff. Be it remembered, That on *Saturday* next after the octave of *St. Hilary* in this ſame term, before our lord the king at *Weſtminſter*, comes *J. T.* by *J. C.* his attorney, and brings in the ſaid court of our ſaid lord the king now here his bill againſt *J. S.* gent. *T. S. R. S.* and *M. L.* in the cuſtody of the marſhal of the *Marſhalſea* of our ſovereign lord the king, before the king himſelf, of a plea of

treſpaſs, aſſault and impriſonment; and there are pledges of the proſecution, to wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words, to wit, *Kent*, *ſſ.* *J. T.* complains of *J. S.* gent. *T. S.* *R. S.* and *M. L.* being in the cuſtody of the marſhal of the lord the king, before the king himſelf, for that the ſaid *J. S.* *T.* *R.* and *M.* on the twenty-ſecond day of *Auguſt* in the fifteenth year of the reign of *George* the ſecond, now king of *Great Britain*, *&c.* at *Sittingbourne* in the ſaid county of *Kent*, with force and arms, *&c.* to wit, with ſwords, ſtaves, knives and ſticks, made an aſſault on the ſaid *J. T.* and then and there beat, wounded and ill-treated the ſaid *J. T.* whereof the ſaid *J. T.* was in great danger of loſing his life. And alſo for that the ſaid *J. S.* *T.* *R.* and *M.* afterwards, to wit, on the ſame day and year, at *Sittingbourne* aforeſaid, in the county aforeſaid, with force and arms, *&c.* to wit, with ſwords, knives, ſtaves and guns, made another aſſault on the ſaid *J. T.* and then and there again beat, wounded, impriſoned and ill-treated the ſaid *J. T.* and him the ſaid *J. T.* put in priſon without any reaſonable cauſe, againſt the will of the ſaid *J. T.* and againſt the laws and cuſtoms of this kingdom, for a long time, to wit, for the ſpace of twelve hours detained and kept, and other injuries to the ſaid *J. T.* then and there did, againſt the peace of the preſent king, to the damage of the ſaid *J. T.* of one hundred pounds. And therefore he brings ſuit, *&c.*

Declaration in treſpaſs, aſſault and impriſonment, againſt four defendants. B. R.

Plea of Not guilty by three defendants.

And the ſaid *J. S.* by *D. G.* his attorney, and the ſaid *T.* by *T. M.* his attorney, and the ſaid *M.* by *R. B.* his attorney, and the ſaid *R.* in his proper perſon come and defend the force and injury, when, *&c.* And the ſaid *J. S. T.* and *M.* ſay, that they are in no wiſe guilty of the treſpaſſes, aſſaults and impriſonment above laid to their charge, as the ſaid *J. T.* above complains againſt them. And of this they put themſelves upon the country.

Iſſue.

Judgment by nil dicit againſt the fourth defendant.

And the ſaid *J. T.* likewiſe, *&c.* *And* the ſaid *J. T.* prays that the ſaid *R.* may anſwer his ſaid bill, and hereupon the ſaid *R.* prays leave to imparle until *Friday* next after the octave of the purification of the Bleſſed Virgin *Mary*. And it was given to him, *&c.* The ſame day is given to the ſaid *J. T.* at the ſame place, *&c.* At which day before our lord the king at *Weſtminſter* comes the ſaid *J. T.* by his attorney aforeſaid. And the ſaid *R.* at that day, though ſolemnly required came not, nor does he ſay any thing in bar or preclu-ſion of the ſaid action of the ſaid *J. T.* whereby the ſaid *J. T.* remains therein undefended againſt the ſaid *R. &c.* Wherefore the ſaid *J. T.* ought to recover againſt the ſaid *R.* his damages by him ſuſtained by reaſon of the treſpaſſes, aſſault and impriſonment aforeſaid. But becauſe it is convenient and neceſſary that there be but one taxation of damages in this cauſe, therefore to the aſſeſſment of damages againſt the ſaid *R.* let all inquiry thereof ceaſe till the trial of the above iſſue joined between the ſaid *J. T.* and the ſaid *J. S. T.* and *M.* *And* as well to try the ſaid iſſue,

Unico taxatio.

Venire facias tam ad tri-

iſſue, as to inquire what damages the ſaid *J. T.* hath ſuſtained by reaſon of the treſpaſſes, aſſaults and impriſonment aforeſaid, let a jury come before the lord the king at *Weſtminſter* on *Friday* next after the octaves of the purification of the Bleſſed Virgin *Mary*. And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid there, *&c.* *Afterwards* the proceſs being continued between the parties aforeſaid of the plea aforeſaid, by the juries being reſpited before our lord the king at *Weſtminſter* until *Wedneſday* next after fifteen days from the day of *Eaſter*, unleſs his majeſty's juſtices aſſigned to hold the aſſiſes in the ſaid county ſhall firſt come on *Monday* the fifteenth day of *March* next at *Maidſtone* in the county aforeſaid, according to the form of the ſtatute in that caſe lately made and provided, for default of the jury, *&c.* *At which day* before our lord the king at *Weſtminſter* comes the ſaid *J. T.* by his attorney aforeſaid, and the ſaid juſtices of the ſaid lord the king ſent here the ſaid record had before them in theſe words, to wit, *Afterwards* upon the day and at the place within contained, before Sir *L. C.* knt. one of the barons of his majeſty's court of *Exchequer*, and *W. W.* ſerjeant at law, juſtices of our ſaid lord the king, appointed to take the aſſiſes of the county of *Kent*, according to the form of the ſtatute in that caſe made and provided, came as well the within-named *J. T.* by his attorney within-named, as the within-named *J. S. T. S.* and *M. L.* by their ſeveral attornies within-named,

and, quam inquirend. awarded.

Proceſs continued.

Niſi prius.

Day in bank.

Poſtea.

and the jurors of the jury within-mentioned being drawn by ballot according to the form of the ſtatute in ſuch caſe made and provided, and called, likewiſe come, who being elected, tried and ſworn to ſpeak the truth concerning the matters within contained, do ſay upon their oath, That the ſaid *J. S* and *T. S.* are guilty of the treſpaſſes, aſſaults and impriſonment in manner and form as the ſaid *J. T.* by his declaration within complains againſt them; and they aſſeſs the damages of the ſaid *J. T.* on the within written occaſion, beſides his coſts and charges by him laid out about his ſuit in this behalf againſt the ſaid *J. S.* and *T. S.* to eighteen ſhillings and four pence; and for his coſts and charges to other eighteen ſhillings and four pence. *And* the ſaid jurors upon their ſaid oath further ſay, that the ſaid *J. T.* hath ſuſtained damages on occaſion of the ſaid ſeveral treſpaſſes, aſſaults and impriſonment within committed by the ſaid *R. S.* over and above his coſts and charges by him laid out about his ſuit in that behalf, to one ſhilling, and for thoſe coſts and charges to one other ſhilling. *And* the jurors aforeſaid on their ſaid oath further ſay, that the within-named *M. L.* is in no wiſe guilty of the ſaid ſeveral treſpaſſes, aſſaults and impriſonment within laid to his charge, in manner and form as the ſaid *J. T.* by his ſaid declaration within complains againſt him, as by him the ſaid *M.* in his within-written plea is in that behalf alledged. *Therefore* it is conſidered, that the ſaid *J. T.* do recover againſt the ſaid *J. S.* and *T. S.* his ſaid damages by the ſaid

Verdict for the plaintiff againſt two defendants.

Damages aſſeſſed againſt the defendant who ſuffered judgment by default.

Verdict againſt the plaintiff for the other defendant.

Judgment.

ſaid jury in form aforeſaid aſſeſſed againſt them to thirty-ſix ſhillings and eight-pence; and againſt the ſaid *R. S.* his ſaid damages by the ſaid jury, in form aforeſaid, aſſeſſed to two ſhillings; and alſo againſt them the ſaid *J. S. T. S.* and *R. S.* ſixteen pounds, by the ſaid court of our ſaid lord the king here adjudged to the ſaid *J. T.* and with his aſſent for his coſts and charges aforeſaid, by way of increaſe: It is alſo conſidered, that the ſaid *J. T.* be amerced for his falſe claim againſt the ſaid *M. L.* for the ſaid ſeveral treſpaſſes, aſſaults and impriſonment, whereof the ſaid *M. L.* is above acquitted; and that the ſaid *M.* go thereof without day, *&c.*

Afterwards, to wit, on *Friday* the eleventh day of *February* in the ſixteenth year of the reign of king *George* the ſecond, *&c.* before Sir *J. W.* knt. chief juſtice of the *Common Bench* of our ſovereign lord the king, Sir *T. P.* knt. chief baron of the *Exchequer* of our ſovereign lord the king, of the degree of the *coif*, Sir *J. F. A.* knt. and *T. B.* eſq; two other of the juſtices of the *Common Bench* of our ſovereign lord the king, and alſo Sir *L. C.* knt. and *J. R.* eſq; two other of the barons of the *Exchequer* of our ſovereign lord the king, of the degree of the *coif*, in the ſaid *Exchequer* chamber at *Weſtminſter*, comes the aforeſaid *J. S.* in his proper perſon, and the ſaid *T. S.* and *R. S.* although ſolemnly called, come not, but make default. And the ſaid *J. S.* ſays, that in the record and proceſs aforeſaid, and alſo in giving the judgment aforeſaid, there is manifeſt error; and prays, that a

In the Exchequer chamber.

Only one of the plaintiffs in error appears,

who prays a ſcire facias againſt the other two.

a writ of our ſovereign lord the king to ſummon the ſaid *T. S.* and *R. S.* to be before the ſaid juſtices of the *Common Bench* and barons of the *Exchequer*, of the degree of the *coif*, in the ſaid *Exchequer* chamber, to proſecute the writ of error aforeſaid, together with him the ſaid *J. S.* if they think fit; and further to do and receive what the court here in the premiſſes ſhall conſider; and it is granted to him by the ſaid court. *By which* the ſheriff is commanded that he ſummon, by good ſummoners, the ſaid *T. S.* and *R. S.* to be before the ſaid juſtices of the *Common Bench* and barons of the *Exchequer*, of the degree of the *coif*, in the ſaid *Exchequer* chamber at *Weſtminſter*, on *Wedneſday* the twenty-ſeventh day of *April* next, to proſecute together with the ſaid *J. S.* the ſaid writ of error againſt the ſaid *J. T.* if, *&c.* And further, *&c.* The ſame day is given to the ſaid *J. S.* there, *&c.* *And* now here at this day, to wit, on *Wedneſday* the twenty-ſeventh day of *April* in the ſixteenth year of the reign of king *George* the ſecond, *&c.* before Sir *J. W.* knt. chief juſtice of the common bench of our ſovereign lord the king, Sir *T. P.* knt. chief baron of the *Exchequer* of our ſovereign lord the king, of the degree of the *coif*, Sir *J. F. A.* knt. Sir *T. A.* knt. and *T. B.* eſq; the three other juſtices of the common bench of our ſovereign lord the king, and alſo before Sir *L. C.* knt. *J. R.* eſq; and *C. C.* eſq; the three other barons of the *Exchequer* of our ſovereign lord the king, of the degree of the *coif*, in the ſaid *Exchequer* chamber at *Weſtminſter*, comes the

Scire facias awarded.

Return ſcire feci.

the ſaid *J. S.* in his proper perſon; and the ſheriff, to wit, *T. W.* eſq; ſheriff of the county of *Kent*, now returneth, that by virtue of the writ to him therefore directed, he had by *S. S.* and *R. L.* good and lawful men of his bailiwic, ſummoned the ſaid *T. S.* and *R. S.* to be before the juſtices and barons aforeſaid, at the time and place aforeſaid, as by the ſaid writ commanded, *&c.* *And* the ſaid *T. S.* and *R. S.* being ſolemnly called the fourth day, come not. *Wherefore it is conſidered*, that the ſaid *J. S.* alone, without the ſaid *T. S.* and *R. S.* proſecute the ſaid writ of error, and aſſign the error in the record and proceſs aforeſaid, and alſo in giving the judgment aforeſaid, *&c.* *And upon this* the ſaid *J. S.* in his proper perſon comes and ſays, that in the record and proceſs aforeſaid, and alſo in giving the judgment aforeſaid, there is manifeſt error in this, that is to ſay, that by the record and proceſs aforeſaid, it appears, that the ſaid judgment is given for the ſaid *J. T.* againſt the ſaid *J. S.* when by the law of this realm the ſaid judgment ought to have been given for the ſaid *J. S.* againſt the ſaid *J. T.* Therefore in this there is manifeſt error. And the ſaid *J. S.* prays, that for this and other errors in the ſaid record, the ſaid judgment may be reverſed, annulled, and held intirely for nothing; and that he may be reſtored to all things which he hath loſt by occaſion of the ſaid judgment; and that the ſaid *J. T.* may rejoin to the ſaid error, *&c.*

T. Robinſon.

They make default.

Judgment that he proſecute alone.

General errors aſſigned.

And

Rejoinder.

And the ſaid *J. T.* comes voluntarily into court here, and ſays that in the record and proceſs aforeſaid, or in giving the judgment aforeſaid, there is not any error; and prays, that the court here may proceed to the examination of the record and proceedings as of the matter aforeſaid above aſſigned for error.

Ed. Bootle.

Continuance by curia adviſari vult.

But becauſe the court of our lord the king here are willing to conſider of and concerning the ſaid premiſſes before judgment is given thereon, a day is given unto the ſaid parties until next, to hear judgment thereof, for that the ſaid court of our lord the king now here is not yet adviſed thereof, *&c.*

Errors aſſigned in parliament.

Afterwards, to wit, on the day of in the year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, *&c.* before the king himſelf in his parliament, the ſaid *E. S.* comes by *G. W.* his attorney, and ſays, that in the ſaid record and proceſs, as alſo in giving the ſaid judgment there is manifeſt error in this, to wit, that the ſaid declaration and the matter contained therein, is not ſufficient in law to maintain the action of the ſaid *G. R.* againſt the ſaid *E. S.* therefore in that there is manifeſt error; alſo in this, that by the ſaid record it appears, that the ſaid judgment was given in form aforeſaid for the ſaid *G. R.* againſt the ſaid *E. S.* when by the law of the land

land the ſaid judgment ought to have been given for the ſaid *E. S.* againſt the ſaid *G. R.* and the ſaid *E. S.* prays, *&c.*

The like.

Afterwards, to wit, on the day of in the year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, *&c.* before our ſaid lord the king and great men and peers aſſembled in this preſent parliament at *Weſtminſter* in the county of *Middleſex*, the ſaid *T. L.* comes by *J. L.* his attorney, and ſays, that there is manifeſt error in the ſaid record and proceſs, alſo in giving and affirming the ſaid judgment mentioned in the ſaid record, in this, to wit, that by the ſaid record it appears, that the ſaid judgment given by the court of our ſaid lord the king, before the king himſelf at *Weſtminſter*, was given for the ſaid *J. B.* againſt the ſaid *T. L.* when by the law of the land the ſaid judgment ought to have been given for the ſaid *T. L.* againſt the ſaid *J. B.* and therefore in that there is manifeſt error; there is alſo error in affirming the ſaid judgment, becauſe he ſays that the ſaid judgment was affirmed in the court of our lord the king of *Exchequer* chamber at *Weſtminſter* before the juſtices of the common bench and the barons of the ſaid *Exchequer*, where no ſuch affirmance of the ſaid judgment ought to have been thereupon given; but the ſaid judgment by the law of the land ought to have been reverſed; and therefore in that there is manifeſt error. And the ſaid *T. L.* prays that the ſaid judgment, for the ſaid errors

rors

rors and others in the ſaid record and proceſs, may be reverſed, annulled and intirely ſet aſide, and that he may be reſtored to all that he has loſt by occaſion of the ſaid judgment and affirmance, and that the ſaid *J. B.* may rejoin to the ſaid errors, *&c.*

Error aſſigned on a judgment, and affirmance of that judgment in Ireland.

Afterwards, to wit, on next after in this ſame term before our lord the king at *Weſtminſter* the ſaid *N. G.* and *W. C.* come by *L. H.* their attorney, and ſay, that in the ſaid record and proceſs, and alſo in giving the ſaid judgment, and alſo in affirming the ſame, there is a manifeſt error in this, to wit, that by the record of the ſaid judgment, and affirmance of the ſame, it appears, that the ſaid judgment in form aforeſaid given and affirmed, was given and affirmed for the ſaid *J. W.* againſt the ſaid *N.* and *W.* when, by the law of the land of the kingdom of *Ireland*, the ſaid judgment ought to have been given for the ſaid *N.* and *W.* againſt the ſaid *J.* Therefore in that there is manifeſt error: And this they the ſaid *N.* and *W.* are ready to verify: Wherefore they pray, that the ſaid judgment and affirmance thereof, for the ſaid error and other errors in the ſaid record and proceſs, may be reverſed, annulled and intirely ſet aſide, and that they the ſaid *N.* and *W.* may be reſtored to all that they have loſt by occaſion of the ſaid judgment and affirmance, *&c.* and that the ſaid *J.* may rejoin to the ſaid errors, *&c.*

After-

Afterwards, to wit, on next after the before our lord the king at *Weſtminſter* the ſaid *T. B.* comes by *T. H.* his attorney, and ſays, that in the ſaid record and proceſs, alſo in giving the ſaid judgment, there is manifeſt error, in this, to wit, that the ſaid declaration in the ſaid record mentioned, and upon which the ſaid judgment is given in form aforeſaid, and the matter therein contained, is not ſufficient in law to maintain the ſaid judgment thereupon given in form aforeſaid; and ſo the ſaid judgment thereupon given in form aforeſaid is erroneous and void in law; and therefore in that there is manifeſt error; there is alſo manifeſt error in this, that where by the ſaid record it appears, that the ſaid judgment in form aforeſaid given, was given for the aforeſaid Sir *W. H.* knt. Sir *R. O.* knt. and *W. O.* againſt the ſaid *T. B.* whereas by the law of the land judgment in the ſaid plea ought to have been given for the ſaid *T. B.* againſt the ſaid Sir *W. H.* knt. Sir *R. O.* knt. and *W. O.* and thereupon in that there is manifeſt error: And he prays, that the ſaid judgment for theſe errors and others in the ſaid record and proceſs may be reverſed, annulled and intirely ſet aſide, and that he the ſaid *T.* may be reſtored to all that he has loſt by occaſion of the ſaid judgment, and that the ſaid Sir *W. H.* knt. Sir *R. O.* knt. and *W. O.* may rejoin to the ſaid errors, *&c.* *And* the ſaid Sir *W. H* knt. Sir *R. O.* knt. and *W. O.* come by *A. M.* their attorney, and ſay, that

Error aſſigned in B. R. on a judgment given in C. B.

Rejoinder in error.

that there is no error either in the ſaid record and proceſs, or giving the ſaid judgment; and pray that the court of our lord the king now here may proceed to examine as well the ſaid record and proceſs, as the ſaid matters above aſſigned for errors by the ſaid *T. B.* and that the ſaid judgment may be in all things affirmed.

Error aſſigned on judgment in C. B.

And the ſaid *B.* counteſs dowager of *Plymouth* by *H. D.* her attorney, comes and ſays, that in the ſaid record and proceſs, as alſo in giving the ſaid judgment, there is manifeſt error, in this, to wit, that the ſaid declaration, and the matter therein contained, are not ſufficient in law to maintain the action of the ſaid *T.* and *D.* thereupon againſt her the ſaid counteſs; therefore in that there is manifeſt error; there is alſo error in this, that by the ſaid record it appears, that the ſaid judgment given in the manner and form aforeſaid, was given for the ſaid *T.* and *D.* againſt the ſaid counteſs in the plea aforeſaid, where by the law of the land the ſaid judgment ought to have been given for the ſaid counteſs againſt the ſaid *T.* and *D.* and therefore in that alſo there is manifeſt error: *And* the ſaid counteſs further ſays, that there is alſo error in this, to wit, that there is not any warrant of attorney affiled of record in the ſaid court of *Common Bench* between the ſaid parties of the plea aforeſaid, to warrant the ſaid *C. D.* to be attorney for the ſaid *T.* and *D.* againſt the ſaid counteſs in the plea aforeſaid; therefore in that alſo there is manifeſt error: *Wherefore* the ſaid counteſs prays the

No warrant of attorney.

Certiorari prayed.

the writ of our lord the king of *Certiorari* to the chief juſtice of our ſaid lord the king of the bench to be directed, *&c.* and it is granted to her, *&c.* *Whereby* it is commanded to Sir knt. chief juſtice of the bench aforeſaid, That he ſearch the rolls and other memorandums of the warrants of attorney of the county of *Middleſex* of *Eaſter* term in the year of the reign of our ſaid lord the king, being in his cuſtody on record, and that he without delay certify to our ſaid lord the king, whereſoever, *&c.* what he ſhall thereupon find in the ſaid rolls and memorandums, together with the writ of our ſaid lord the king to him thereupon directed, *&c.* which ſaid chief juſtice of the bench aforeſaid anſwered to our ſaid lord, That the execution of the ſaid writ appeared in a certain ſchedule annexed to the ſaid writ, in which ſaid ſchedule is contained the title of the rolls of the warrants of attorney filed of *Eaſter* term aforeſaid in the ſaid writ ſpecified, being in the cuſtody of the ſaid chief juſtice on record, and the record of a certain warrant of attorney between the parties aforeſaid, of the plea aforeſaid, in the ſame form in which the ſaid warrant of attorney is entered on record on the ſaid rolls; which ſaid title and warrant of attorney follow in theſe words: The rolls of attornies received before Sir knt. chief juſtice of our lord the king of the bench, and his companions, of *Eaſter* term in the year of the reign of our ſovereign lord

Award of the certiorari.

Return.

king of *Great Britain*, *France* and *Ireland*, defender of the faith, *&c.*

Warrant of attorney for an executrix againſt an executrix.

Middleſex, to wit, *T. T.* eſq; and *D.* his wife, executrix of the laſt will and teſtament of Sir *E. P.* knt. put in their place *C. D.* their attorney, againſt *B.* counteſs dowager of *Plymouth*, executrix of the laſt will and teſtament of *C.* earl of *Plymouth*, of a plea of debt; which ſaid writ is affiled among the records without a day, *&c.* And upon this the ſaid *T.* and *D.* by *M. J.* their attorney, come freely here into court, and the ſaid *B.* counteſs dowager of *Plymouth*, as before, ſays, that in the ſaid record and proceedings, as alſo in giving the judgment aforeſaid, there is manifeſt error, by alledging the errors aforeſaid by her in form aforeſaid alledged; and prays that the ſaid judgment, for thoſe errors and others of the ſaid record and proceedings, may be reverſed, annulled and intirely ſet aſide, and that ſhe may be reſtored to all that ſhe has loſt by occaſion of the ſaid judgment, *&c.* and that the ſaid *T.* and *D.* may rejoin to the ſaid errors, *&c.* and that the court of our ſaid lord the king here may proceed to the examination as well of the ſaid record and proceedings, as of the aforeſaid matters above aſſigned for error, *&c.* *And* the ſaid *T.* and *D.* ſay, that there is no error either in the ſaid record and proceſs, or in giving the ſaid judgment; and they likewiſe pray that the court of our ſaid lord the king may proceed to the examination as well of the ſaid record and proceedings, as of the matters aforeſaid above aſſigned for error, and that the ſaid

In nullo eſt erratum rejoined.

judgment may be in all things affirmed, &c. *But* becauſe the court of our ſaid lord the king now here is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lord the king from * the day of *St. Michael*, in three weeks then next enſuing, whereſoever, &c. to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof: *At* which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid: *But* becauſe the court of our ſaid lord the king now here is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lord the king on the octave of *St. Hilary*, whereſoever, &c. to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof: *At* which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid: *But* becauſe the court of our ſaid lord the king now here is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lord the king in fifteen days of *Eaſter*, whereſoever, &c. for that the court of our ſaid lord the king now here is not yet adviſed thereof: *At* which day before our lord

Continuance by cur' adviſare vult.

Continuance.

Continuance.

Judgment reverſed.

* No ſuch return. See *Vol.* 1, *p.* —.

the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid; upon which as well the ſaid record and proceedings, and judgment thereupon given, as the ſaid cauſes and matters above for error aſſigned, being viewed and by the court of our ſaid lord the king now here fully underſtood and diligently examined; for that it appears to the court of our ſaid lord the king now here, that there is manifeſt error in the ſaid record and proceedings, and alſo in giving the ſaid judgment; it is conſidered, that the ſaid judgment, for the ſaid errors and others in the ſaid record and proceedings, be reverſed, annulled and intirely ſet aſide, and that the ſaid *B.* counteſs dowager of *Plymouth* be reſtored to all that ſhe hath loſt by occaſion of the ſaid judgment, *&c.*

Aſſignment of error in B. R.

Afterwards, to wit, on *Monday* next after the morrow of the Aſcenſion of our Lord, in this ſame term before our ſovereign lord the king at *Weſtminſter* cometh the ſaid *E. W.* in her proper perſon, and ſaith, that in the record and proceedings aforeſaid, and alſo in the giving of the judgment aforeſaid, there is manifeſt error in this, to wit, that the ſaid declaration in the ſaid record ſpecified, and the matters therein contained are not ſufficient in law for the ſaid *W. W. W.* to maintain his ſaid action againſt the ſaid *E.* therefore in this there is manifeſt error; there is alſo error in this, that whereas by the ſaid record it appears, that the ſaid judgment in form aforeſaid

ſaid

ſaid given, was given for the ſaid *W. W.* againſt the ſaid *E.* yet the ſaid judgment by the law of the land ought to have been given for the ſaid *E.* againſt the ſaid *W. W.* therefore in this alſo there is manifeſt error; there is alſo error in this, that by the record here certified it appears, that the ſaid *W. W.* appeared and declared by *T. W.* his attorney, yet the ſaid *T. W.* hath no warrant of attorney filed of record to appear for the ſaid *W. W.* againſt the ſaid *E.* of the plea aforeſaid, and that the ſaid *E.* appeared by *J. C.* her attorney, yet the ſaid *J. C.* had no warrant of attorney to appear for the ſaid *E.* againſt the ſaid *W. W.* in the plea aforeſaid. There is alſo error in this, (that is to ſay) that no original writ between the ſaid parties of the plea aforeſaid is filed of record, or remains of record in the cuſtody of the keeper of the writs of our lord the king of the *Common Bench*; and hereupon the ſaid *E.* prays two ſeveral writs of our ſaid lord the king, to wit, one of them to be directed to Sir *R. E.* knt. chief juſtice of our ſaid lord the king of the *Common Bench*, and the other to *G. H.* earl of *Litchfield*, keeper of the writs and rolls of our ſaid lord the king of the *Common Bench* aforeſaid, to certify fully to our ſaid lord the king the truth thereof, and they are granted to her, *&c.* and the ſaid *E.* alſo prays that the ſaid judgment for the ſaid errors, and other the errors being in the ſaid record and proceedings, may be reverſed, annulled and altogether held for nought, and that the ſaid *E.* may be reſtored to all that ſhe hath loſt by

No warrant of attorney;

nor original.

Certiorari prayed.

means of the ſaid judgment, and that the ſaid *W. W.* may rejoin to the errors aforeſaid.

W. Chapple.

Whereupon Tueſday next after eight days from the *Holy Trinity* is given by the ſaid court of our ſaid lord the king to return to the court of the ſaid lord the king, before the king himſelf at *Weſtminſter*, the ſaid ſeveral writs of *certiorari* above prayed; and the ſame day is given to the ſaid *W. W.* there, *&c.* And the ſaid chief juſtice of the ſaid bench, and the ſaid keeper of the ſaid writs and rolls of the ſaid lord the king that now is, did not ſend the ſaid ſeveral writs at the ſaid day, nor either of them, *&c.* nor did any thing thereupon, nor either of them did any thing thereupon.

And thereupon the ſaid *W. W.* by *W. B.* his attorney, freely cometh here into court, and the aforeſaid errors being heard, now ſays, that neither in the record and the ſaid proceedings, nor in the giving of judgment aforeſaid, in any thing is there error; and prays alſo that the court of our ſaid lord the king now here in like manner may proceed to the examination as well of the record and the proceedings aforeſaid, as the cauſe aforeſaid by the ſaid *E. W.* for error above aſſigned and alledged, and that the judgment aforeſaid in all things may be affirmed. *But* becauſe the court of our ſaid lord the king is not yet adviſed to give their judgment of and upon the premiſſes, a further day is given to the

the parties aforeſaid before our lord the king, until whereſoever, &c. to hear their judgment of and upon the premiſſes, becauſe the court of our ſaid lord the king are not yet adviſed thereof, &c.

Pleas before our lord the king at Weſtminſter, *of the term of the Holy* Trinity *in the year of the reign of our lord* George *the third, now king of* Great Britain, &c.

Roll

England, to wit. OUR lord the king ſent to his right worthy and well-beloved *C.* lord *C.* his chief juſtice of the bench, his writ cloſe in theſe words, to wit, *George* the third, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, &c. To his truſty and well-beloved *C.* lord *C.* chief juſtice of the bench, greeting. Foraſmuch as in the record and proceedings, and alſo in giving judgment in a plaint which was in our court before you and your aſſociates our juſtices of the ſaid bench, by our writ between *J. A.* and *J. W.* late of *London*, merchant, *J. O.* late of *London*, merchant, and *N. R.* late of *London*, merchant, of a certain treſpaſs upon the caſe to the ſaid *J. A.* &c. (to the end of the tranſcript) and the ſaid *J. W. J. O.* and *N.* in mercy, &c.

The manner of making up a record of niſi prius, on iſſue joined in error on a judgment in C. B.

The record of the judgment after a verdict in caſe.

Error aſſigned in B. R.

Afterwards, to wit, on *Wedneſday* next after fifteen days of *Eaſter* in that ſame term, before our lord the king at *Weſtminſter* the ſaid *J. O.* and *N. R.* come in their proper perſons, and ſay, * That in the ſaid record and proceedings, as alſo in giving the ſaid judgment, there is manifeſt error in this, to wit, that it appears by the ſaid record, that the ſaid judgment is given as well againſt the ſaid *J. W.* as againſt the ſaid *J. O.* and *N. R.* when in truth the ſaid *J. W.* in the ſaid plea mentioned died before the trial of the iſſue in the ſaid record joined between the parties aforeſaid, and before the giving the ſaid judgment, to wit, on the day of in the year of the reign of our ſaid ſovereign lord the now king, at *Horſham* aforeſaid in the county of *Suſſex* aforeſaid, and ſo the ſaid judgment is erroneous and void in law. And the ſaid *J. O.* and *N. R.* pray, that the ſaid judgment, for the error aforeſaid, and other errors in the ſaid record and proceedings, may be reverſed, annulled and intirely ſet aſide; and

Death of one of the defendants before trial.

* Judgment in *C. B.* againſt five defendants, four of them bring a writ of error, and aſſign for error, that the fifth defendant died before the verdict, but did not conclude this aſſignment of error in fact with *hoc parati ſunt verificare*; the defendant pleaded *in nullo eſt erratum* generally; the plaintiffs moved to amend, by adding *hoc parati ſunt verificare*; denied, becauſe it was not to affirm, but to reverſe a judgment. *Hil.* 7 *W.* 3. *B. R. Walker* v. *Stokoe*, *Carth.* 367.

that

that they the ſaid *J. O.* and *N. R.* may be reſtored to all they have loſt by occaſion of the ſaid judgment; *And* they pray the writ of our lord the king to ſummon the ſaid *J. A.* to come before our lord the king to hear the ſaid record and proceedings; and it is granted to them. By which it is commanded to the ſheriff of *Suſſex*, that by good, *&c.* he make known to the ſaid *J. A.* that he be before our lord the king on the morrow of the *Holy Trinity*, whereſoever, *&c.* to hear the ſaid record and proceedings, if, *&c.* and further, *&c.* The ſame day is given to the ſaid *J. O.* and *N. R. &c.* At which day before our lord the king at *Weſtminſter* the ſaid *J. O.* and *N. R.* come in their proper perſons, *And* the ſheriff did not return the ſaid writ.

Award of ſcire facias ad audiendum errores.

Vic. non miſ. breve.

And the ſaid *J. A.* on the fourth day of the plea being ſolemnly demanded alſo comes by *J. A.* his attorney, and ſays, that by any thing before alledged the ſaid judgment ought not to be reverſed, becauſe he ſays, that the ſaid *J. W.* in the ſaid plea mentioned, is yet in being and alive; without this, that the ſaid *J. W.* before the trial of the ſaid iſſue in the ſaid record joined between the parties aforeſaid, died in manner and form as the ſaid *J. O.* and *N.* have above alledged: And this he is ready to verify: Wherefore he prays, that the ſaid judgment may be in all things affirmed, *&c.*

Plaintiff in original action appears; pleads the ſaid defendant is living, and traverſes his death.

And the ſaid *J. O.* and *N. R.* as before ſay, that the ſaid *J. W.* before the trial of the ſaid iſſue in the ſaid record joined between the parties aforeſaid, died in manner and form as they

Replication.

they the ſaid *J. O.* and *N. R.* have above alledged; and they pray that this may be inquired of by the country: *And* the ſaid *J. A.* does likewiſe the ſame, *&c.* *It is* therefore commanded to the ſheriff of the ſaid county of *Suſſex*, that he cauſe to come before our lord the king from the day of the *Holy Trinity* in three weeks, whereſoever, *&c.* twelve, *&c.* of the body of the county, *&c.* by whom, *&c.* and who neither, *&c.* to take cognizance upon their oaths, whether the ſaid *J. W.* before the trial of the ſaid iſſue in the ſaid record joined between the parties aforeſaid, died, as the ſaid *J. R.* and *N. R.* have alledged, or no; becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, *&c.* *At* which day before our lord the king at *Weſtminſter* came as well the ſaid *J. O.* and *N. R.* in their proper perſons, as the ſaid *J. A.* by his attorney aforeſaid; and the ſheriff of *Suſſex*, to wit,

returns the ſaid writ of *venire facias* to him in form aforeſaid directed, in all things ſerved and executed, together with a panel of the names of the jurors, of whom none, *&c.* *It is* therefore commanded to the ſaid ſheriff, that he diſtrain the ſaid jurors by all their lands, *&c.* ſo that he may have their bodies before our lord the king* from the day of *St. Michael* in three weeks, whereſoever, *&c.* or before the juſtices of our ſaid lord the king aſſigned to take the aſſiſes in the county afore-

Iſſue.

Venire awarded.

Return.

Diſtringas awarded.

* No ſuch return. See *Vol.* 1. *p.* —.

ſaid,

ſaid, if they ſhall firſt come on the day of at in the county aforeſaid, according to the form of the ſtatute in ſuch caſe made and provided, for default of the jurors, &c. Therefore let the ſheriff have the bodies, &c. The ſame day is given to the parties aforeſaid, &c. *And* be it known, that the king's writ in this caſe on record was delivered to the deputy ſheriff of the ſaid county, on [the laſt day of the term] in this ſame term before our lord the king at *Weſtminſter*, to be executed according to law, at his peril, &c. Le ſciendum.

As yet of the term of the Holy Trinity
Witneſs Sir W. L. *knt.*

England, to wit, *T. M.* puts in his place *J. W.* his attorney to proſecute his writ of error againſt *W. R.* eſq; in a plea of treſpaſs, and ejectment of farm. Warrant of attorney for the plaintiff in error.

England, to wit, The ſaid *W. R.* puts in his place *A. S.* his attorney againſt the ſaid *T. M.* on the ſaid writ of error in the plea aforeſaid. For the defendant.

England, to wit, The lord the king ſent to his truſty and well-beloved *J. R.* eſq; his chief juſtice appointed to hold pleas in his court, before the king himſelf, in his kingdom of *Ireland*, his writ cloſed in theſe words, to wit, *George* the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, &c. To our truſty Entry of a writ of error to B. R. in Ireland on reverſal of a judgment in ejectment given in C. B. there.

The writ of error.

truſty and well-beloved *J. R.* eſq; our chief juſtice appointed to hold pleas before us in our kingdom of *Ireland*, greeting. Foraſmuch as in the record and proceſs, as alſo in giving of judgment in a plaint which was before our juſtices of the bench in our kingdom of *Ireland*, by our writ between *T. M.* and *W. R.* eſq; of a certain treſpaſs and ejectment of farm done to the ſaid *T.* by the ſaid *W.* Whereupon judgment was given for the ſaid *T.* againſt the ſaid *W.* in the ſame court of the bench in our ſaid kingdom of *Ireland:* Which ſaid record and proceſs, by reaſon of error intervening, we cauſed to come before us in our ſaid kingdom of *Ireland* and judgment thereupon before us, againſt the ſaid *W.* is reverſed, as it is ſaid; and becauſe in reverſing of the ſaid judgment before us in our ſaid kingdom of *Ireland* upon our ſaid writ of error, manifeſt error hath intervened, to the great damage of the ſaid *T.* as by his complaint we are informed: We, willing that the ſaid error, if any be, be duly amended and full and ſpeedy juſtice done to the ſaid parties in this behalf, do command you, that if judgment be thereupon given in our ſaid court of the bench, and in our court reverſed before us in our ſaid kingdom of *Ireland*, then you ſend to us diſtinctly and plainly under your ſeal the record and proceſs aforeſaid, with all things touching the ſame, and this writ, ſo that we may have them before us from the day of *St. Martin* in fifteen days, whereſoever we ſhall then be in *England*, that the record and proceſs aforeſaid being inſpected, we may cauſe

cauſe further to be done thereupon for amending the ſaid error, as of right and according to the law and cuſtom of *England* ſhall be meet to be done; and notify to the ſaid *W.* that he be then there to proceed in the ſaid plaint, and further to do and receive what our court in *England* ſhall conſider in the premiſſes. Witneſs Ourſelf at *Weſtminſter* the fifteenth day of *October* in the thirteenth year of our reign. Allowed *Prudom.*

John Rogerſon.

The return.

The record and proceſs within mentioned, with every thing touching the ſame, I moſt humbly ſend to our lord the king, whereſoever he ſhall be in *England*, in a certain record to this writ annexed, and I have notified to the within-named *W. R.* that he be then there to proceed in the ſaid plaint, as by the ſaid writ I am commanded.

The anſwer of *J. R.* the chief juſtice within-named.

[Then enter the whole tranſcript].

Aſſignment of errors in B.R. in England on a judgment given for the plaintiff in C. B. in Ireland, and reverſed in B. R. there.

Afterwards, to wit, on *Wedneſday* next after fifteen days from the day of *Eaſter* in this ſame term before the lord the king at *Weſtminſter* comes the aforeſaid *T. M.* by *J. W.* his attorney, and ſaith, that in the record and proceedings of reverſal and annullity of the judgment aforeſaid upon the ſaid firſt writ of error, there is manifeſt error in this, to wit, That the judgment aforeſaid by the ſaid court of

of the ſaid lord the king before the king himſelf in *Ireland* upon the ſaid firſt writ of error was reverſed and annulled; whereas the ſaid judgment ought to have been affirmed by the ſame court: Therefore in this there is manifeſt error: And the ſaid *T. M.* prayeth that the reverſal and annullity of the judgment aforeſaid for that and other the errors in the record and proceedings of reverſal and annullity of the ſame judgment may be reverſed, annulled, and altogether held for naught; and that the ſaid firſt judgment may in all things be affirmed; and that he may be reſtored to every thing which he loſt by reaſon of the ſame reverſal and annullity, and that the aforeſaid *W. R.* may rejoin to the errors aforeſaid, *&c.*

J. Strange.

Rejoinder in error.

And the ſaid *W.* by *A. S.* his attorney comes here into court, and ſays, that in the record and proceedings of reverſal and annullity of the judgment aforeſaid upon the ſaid firſt writ of error, there is not any error; and prays that the court of our ſaid lord the king here may proceed to examine as well the record and proceedings of reverſal and annullity of the aforeſaid judgment upon the ſaid firſt writ of error, as the matter aforeſaid above aſſigned for error; and that the judgment of reverſal and annullity aforeſaid upon the ſaid firſt writ of error may be in all things affirmed, *&c.*

Tho. Deniſon.

GEORGE

GEORGE the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, *&c.* *To* our truſty and well-beloved Sir *Dudley Ryder*, knight, our chief juſtice aſſigned to hold pleas in our court before us, greeting. *We* being willing for certain cauſes that it ſhould be certified unto *Us*, whether there be any bill filed againſt *Richard Cocks*, at the ſuit of *John Gentleman* in a plea of breach of covenant before you of record, or not, do command you that you ſearch the files and other remembrances of the bills of the city of *London*, of the term of the *Holy Trinity* in the twenty-ſeventh and twenty-eighth years of our reign, which are in your cuſtody filed of record. And what you ſhall find therein of the ſaid bill between the parties aforeſaid of the plea aforeſaid, do you certify without delay to our juſtices of the *Common Bench* and the barons of our *Exchequer* in our court of *Exchequer* chamber at *Weſtminſter*, together with this writ. *Witneſs* Sir *John Willes*, knight, at *Weſtminſter*, the twenty-ſeventh day of *November* in the twenty-ninth year of our reign.

Certiorari in error to the chief juſtice B. R. to return a bill.

Willes.

The

The anſwer of Sir Dudley Ryder, *knight, chief juſtice within written:*

The return. *I have* ſearched the files and other remembrances of the bills of the city of *London* of the term of the *Holy Trinity* in the twenty-ſeventh and twenty-eighth years of the reign of the ſaid lord the king affiled of record in my cuſtody; and there find a certain bill of the ſame term between the parties within mentioned of the plea aforeſaid. The tenor of which ſaid bill is ſet forth in a certain ſchedule to this writ annexed: And this I certify to his ſaid majeſty's juſtices of the *Common Bench* and barons of the *Exchequer* within written, as I am within commanded.

D. Ryder.

Certiorari to the chief juſtice C. B. to certify warrants of attorney. B. R. Pr. Reg. 25. *GEORGE* the ſecond, *&c.* To our truſty and well-beloved Sir *R. E.* knt. our chief juſtice of the bench, greeting. *We* being willing for certain cauſes, to be certified, whether the general privileged *Dutch* company trading to the *Weſt Indies* have made *W. B.* their attorney againſt *J. L. H.* late of *Philpot-lane*, *London*, jeweller, *J. S. H.* late of *Camomile-ſtreet*, *London*, merchant, *I. S. H.* late of *Fenchurch-ſtreet*, *London*, merchant, *D. D. A.* late of *Berry-ſtreet*, *London*, merchant, *W. H.* late of the *Poultry*, *London*, ſerjeant at mace, and *C. N.* late of *Warwick-lane*, *London*, gent. in a plea of debt in a writ of *ſcire facias*, and whether

whether the ſaid *J. L. H. J. S. H. I. S. H. D. D' A. W. H.* and *C. N.* have made *W. G.* their attorney againſt the ſaid general privileged *Dutch* company trading to the *Weſt Indies* in the ſame plea before you of record, or not, *command* you that you ſearch the rolls and other memorandums of warrants of attorney of our court of the bench for the county of *Middleſex*, in the terms of *St. Hilary* and *Eaſter* in the eleventh year of the reign of the lord *George* the firſt, late king of *Great Britain*, *&c.* being in your cuſtody of record; and that what you ſhall thereupon find in the ſame between the ſaid parties in the plea aforeſaid, you certify to us without delay, whereſoever we ſhall then be in *England*, together with this writ. Witneſs Sir *R. R.* knt. at *Weſtminſter*, the eighth day of *May* in the year of our reign.

Ventris.

The anſwer of Sir R. E. *knt. the chief juſtice within-named.*

I Certify to the lord the king within written, that having ſearched the rolls and other memorandums of warrants of attorney for the county of *Middleſex*, for the terms and year within written, I have not found in the ſame that the ſaid general privileged *Dutch* company trading to the *Weſt Indies*, have made *W. G.* their attorney, againſt the within-named *J. L. H. J. S. H. I. S. H. D. D' A. W. H.* and *C. N.* in the plea within-written, or that the ſaid The return.

ſaid *J. L. H. J. S. H. I. S. H. D. D'A. W. H.* and *C. N.* have made the ſaid *W. G.* their attorney againſt the ſaid company, in the plea within-written.

R. Eyre.

After this the defendants in error ſued out, after alledging diminution, another *certiorari*, whereupon the warrants were returned.

Certiorari to the cuſtos brevium to certify an attachment of privilege.

GEORGE the third, *&c.* To our truſty and well-beloved *G. H.* earl of *Litchfield*, keeper of the writs and rolls of our court of the *Common Bench*, greeting: We, willing for certain cauſes to be certified, whether our writ of attachment of privilege between *G. D.* gent. one of the attornies of our court of *Common Bench* at *Weſtminſter*, and *C. K.* eſq; of a plea of treſpaſs upon the caſe, be filed or remaining of record in your cuſtody, or not, do command you, that you ſearch the file of writs of attachment of privilege, and other memorandums of the county of *Middleſex* of the term of *St. Michael* laſt paſt, being in your cuſtody on record of the court of the bench, and that without delay you certify to us whereſoever we ſhall be in *England*, *&c.* what you ſhall find of the ſaid writ between the parties aforeſaid, of the plea aforeſaid, together with the return thereof, and this writ. Witneſs Sir *W. L.* knt. at *Weſtminſter*, the fifteenth day of in the year of our reign.

Lee.

H. G.

H. G. *of* Newgate-ſtreet, London, *ſugar-baker.*

T. N. *of* Tower-hill, London, *wine-merchant.*

You ſeverally acknowledge to owe ——— [the plaintiff in the action] the ſum of ——— [double the ſum recovered] upon condition that ——— and ——— [the defendants in the action] proſecute their writ of error with effect; and if judgment be affirmed, ſhall ſatisfy and pay the debt, damages and coſts recovered, together with ſuch coſts as ſhall be awarded by occaſion of the delay of execution, or elſe you will do it for them. The form of taking the recognizance of bail in error coram nobis reſidenden.'

Of the term of St. Hilary *in the twenty-ſecond and twenty-third years of king* Charles *the ſecond.*

B. againſt *T.* } *AND* the ſaid *P. B.* by *D. M.* his attorney comes here and ſays, that in the ſaid record and proceedings, and alſo in giving the ſaid judgment there is manifeſt error, to wit, in this, that where the ſaid judgment given in the ſaid plaint was given for the ſaid *G. T.* againſt the ſaid *P. B.* in the plea aforeſaid, the ſaid judgment by the law of the land *of this kingdom of* England ought to have been given for the ſaid *P. B.* againſt the ſaid *G. T.* and ſo the ſaid *P.* ſays, that in the ſaid record and proceedings, Aſſignment of errors.

ceedings, and alſo in giving the ſaid judgment, there is manifeſt error: And the ſaid *P.* prays the writ of our lord the king to ſummons, *&c.*

T. Siderfin.

Continuance. *At* which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid; *But* becauſe the court of our ſaid lord the king now here is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lord the king at *Weſtminſter* until *Friday* on the morrow of the aſcenſion of our Lord to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lord the king now here is not yet adviſed thereof. *At* which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid: Whereupon the ſaid court having ſeen and fully underſtood all and ſingular the premiſſes, and having diligently examined and inſpected as well the record and proceedings aforeſaid, and the judgment given thereupon, as the cauſes and matters aforeſaid aſſigned by the ſaid *J. S.* as above for error; it appears to the ſaid court that there is no error either in the record and proceedings aforeſaid, or in the giving the judgment aforeſaid; and that the ſaid record is no ways vitious or defective: Therefore it is conſidered, that the judgment be in all things affirmed and that it ſtand in its full force and virtue, notwithſtanding the cauſe and

Affirmance of a judgment in B. R.

and matter aforeſaid as above aſſigned for error: *And* it is further conſidered by the ſaid court, that the ſaid *W. M.* recover againſt the ſaid *J. S.* ten pounds adjudged to the ſaid *W. M.* by the ſaid court according to the form of the ſtatute in ſuch caſe made and provided, for his coſts, charges and damages which he hath ſuſtained by reaſon of the delay of execution of the judgment aforeſaid, on pretext of proſecuting the writ of error aforeſaid: And that the ſaid *W. M.* have execution thereof.

Coſts occaſione dilationis executionis.

Afterwards, to wit, on the ——— day of ——— in the ——— year of the reign of our ſovereign lord *George* the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, the tranſcript of the ſaid record and proceſs, between the parties aforeſaid, of the plea aforeſaid, with all things touching the ſame, on pretext of a certain writ of error proſecuted in the premiſſes by the ſaid *P.* before his majeſty's juſtices of the *Common Bench* and barons of the *Exchequer*, of the degree of the *coif*, were tranſmitted from the court of our ſaid lord the king, before the king himſelf, into the *Exchequer* chamber, according to the form of the ſtatute made in the parliament of our lady *Elizabeth* late queen of *England*, held at *Weſtminſter* the twenty-third day of *November* in the twenty-ſeventh year of her reign; *And* the aforeſaid *P.* appearing in the ſame court of *Exchequer* chamber, aſſigned certain matters for errors in the record and proceſs aforeſaid,

Entry of record tranſmitted into the Exchequer chamber.

Error aſſigned.

ſaid, for reverſing and annulling the judgment aforeſaid: To which the aforeſaid *D.* likewiſe appearing in the ſame court of *Exchequer* chamber, pleaded that there was no error either in the record or proceſs aforeſaid, or in giving of the ſaid judgment.

Affirmance of judgment in the Exchequer chamber.

And afterwards, to wit, on ——— the ——— day of ——— in the ——— year of the reign, *&c.* the ſaid court of *Exchequer* chamber having ſeen and diligently examined and fully underſtood, as well the record and proceſs aforeſaid, and the judgment thereupon given, as the ſaid cauſes aſſigned and alledged for error by the ſaid ——— it appeared unto the ſaid court of *Exchequer* chamber, that the ſaid record was in no ways vitious or defective, and that there was no error in the ſaid record: Therefore it was then and there conſidered by the ſaid court of *Exchequer* chamber, that the ſaid judgment be in all things affirmed, and ſtand in full force and effect notwithſtanding the ſaid cauſes and matters aſſigned for error by the ſaid ———. *And* it was alſo at the ſame time conſidered by the ſame court, that the ſaid —— recover againſt the ſaid ——— ten pounds adjudged to the ſaid ——— by his own aſſent by the ſaid court, according to the form of the ſtatute in ſuch caſe made and provided, for his damages, coſts and charges which he had ſuſtained by reaſon of the delay of execution of the ſaid judgment on pretence of proſecuting the ſaid writ of error: *And* thereupon the ſaid record and proceedings of the juſtices of the *Common Bench* and of the barons of the *Exchequer*

Coſts occaſione dilationis executionis.

Remittitur.

chequer aforeſaid, before them had in the premiſſes, were then remitted by the ſaid juſtices and barons before our ſaid lord the king whereſoever he then was in *England*, according to the form of the ſtatute above-mentioned: And they now remain here in the court of our ſaid lord the king, before the king himſelf.

As the court, *&c. And* prays the writ of our ſaid lord the king, to warn the ſaid *R.* to be before our lord the king to hear the ſaid record and proceedings; And it is granted to him, *&c.* By which it is commanded to the ſheriff of the county of *Surry*, that by good and lawful men of his bailiwic he make known to the ſaid *R.* that he be before our lord the king from the day of the *Holy Trinity* in fifteen days whereſoever he ſhall then be in *England*, to hear the record and proceedings aforeſaid, if it ſhall ſeem expedient to him; And further to do and receive what the court of our lord the king before the king himſelf ſhall conſider in that behalf; The ſame day is given to the ſaid *R. &c. At* which day before our lord the king at *Weſtminſter* came the ſaid *R.* by his attorney aforeſaid; And the ſaid *R.* on the fourth day of the plea being ſolemnly demanded, alſo came by *G. C.* his attorney; *Upon* which the ſaid *R.* as before ſays, that in the ſaid record and proceedings, and alſo in giving the ſaid judgment, there is manifeſt error, by alledging the ſaid errors by him in form aforeſaid alledged; and prays that the ſaid judgment for thoſe errors, and

Scire facias prayed and awarded.

Parties appear.

Plaintiff in error alledges the errors before aſſigned, &c.

others being in the ſaid record and proceedings, may be reverſed, annulled and intirely held for nought, and that he may be reſtored to all that he has loſt by occaſion of the ſaid judgment; and that the ſaid *R. L.* may rejoin to thoſe errors; and that the court of our lord the king here may proceed to examine as well the record and proceedings aforeſaid, as the matter aforeſaid above aſſigned for error; *Upon* which the ſaid *R.* ſays, that the ſaid *R. L.* on the ſaid twenty-ninth day of *July* in the twenty-ninth year aforeſaid was of full age, and not under the age of one and twenty years, in manner and form as the ſaid *R. L.* has above alledged; And he prays that this may be inquired of by the country; *And* the ſaid *R. L.* does ſo likewiſe; *Therefore* it is commanded to the ſheriff of the county of *Surry*, that he cauſe to come before our lord the king from the day of the *Holy Trinity* in three weeks whereſoever, *&c.* twelve free and lawful men of the *Viſne* of *Southwark* aforeſaid in the county aforeſaid, of whom each has twenty pounds of lands, tenements, or rents by the year at the leaſt, by whom the truth of the matter may better be known, and who are no ways related either to the ſaid *R. L.* or to the ſaid *R. L.* to take cognizance upon their oaths, whether the ſaid *R. L.* on the ſaid twenty-ninth day of *July* in the twenty-ninth year aforeſaid, was of the full age of one and twenty years or not; *At* which day before our lord the king at *Weſtminſter* the ſaid *R. L.* came by his attorney aforeſaid; And the ſheriff returned the ſaid writ to him there-

Defendant in error ſays that the plaintiff was of full age.

Iſſue.

Venire awarded;

returned.

thereupon directed, together with a panel of the names of the jurors in all things ſerved and executed, of whom none, &c. *Therefore* it is commanded to the ſheriff, that he diſtrain the ſaid jurors by, &c. and that of the iſſues, &c. ſo that he may have their bodies before our lord the king in eight days of *St. Martin*, whereſoever, &c. or before the juſtices of our ſaid lord the king aſſigned to take the aſſiſes in the county aforeſaid if they ſhall come before, on *Wedneſday* the twenty-fourth day of *July*, at *Rygate* in the county aforeſaid, by form of the ſtatute, &c. for default of the jurors, &c. to make the ſaid jury between the parties aforeſaid, of the plea aforeſaid: The ſame day is given to the ſaid parties, &c. *And* be it known, that the writ of our ſaid lord the king thereupon, on the nineteenth day of *June* in this ſame term, before our lord the king at *Weſtminſter*, was delivered of record to the deputy ſheriff of the county aforeſaid, to be executed in form of law at his peril, &c.

Jurors make default.

Diſtringas awarded.

Niſi prius.

Le ſciendum.

GEORGE the third, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, &c. To his treaſurer and barons of his *Exchequer* in *Ireland*, greeting. Foraſmuch as in the record and proceſs, as alſo in giving judgment in a plaint, which was before you our ſaid barons in our *Exchequer*, by bill, between *S. N.* our debtor and *M. R.* of a certain treſpaſs and eject-

Writ of error to the Exchequer chamber in Ireland.

ejectment of farm done to the ſaid *S.* by the ſaid *M.* which ſaid record and proceſs, by reaſon of error intervening, we cauſed to come before the lord chancellor of *Ireland* and you the ſaid treaſurer and barons, into the chamber of council called the council chamber of the ſaid *Exchequer* in *Ireland*, and judgment thereupon before the lord chancellor and you the ſaid treaſurer and barons is affirmed, as it is ſaid, manifeſt error hath intervened, to the great damage of the ſaid *M.* as by her complaint we are informed; we, willing that the ſaid error, if any be, be duly amended, and full and ſpeedy juſtice done to the ſaid parties in this behalf, *Do* command you that if judgment be given thereupon and affirmed, then you ſend to us diſtinctly and plainly into our parliament in *Great Britain* the next ſeſſion, to be held on *Thurſday* the ninth day of *Auguſt* next enſuing, the record and proceſs aforeſaid, with all things touching the ſame, and this writ; that inſpecting the record and proceſs aforeſaid, we may cauſe further to be done thereupon by the aſſent of the lords ſpiritual and temporal in the ſame parliament aſſembled for correcting the ſaid error*, *as of right and according to the law and cuſtom of* England ſhall be meet to be done. Witneſs Ourſelf at

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* Lilly, *p.* 238, 271, 287, 290, 291. Quod de jure fuerit faciendum.

272, 287, 288. Quod de jure et ſecundum conſuetudinem regni noſtri *Hiberniæ* fuerit faciendum.

Weſtmin-

Weſtminſter the nineteenth day of *June* in the thirteenth year of our reign.

Putland.

Indorſed by our lord the king.

Paid for this writ 6 *l.* 2 *s.*

Note; The plaintiff in error, *M. R.* is an infant, and the ſuit below is by *W.* lord *H.* her guardian: But it ſeems the curſitors take no notice of infancy in a writ of error.

Judgments.

AFterwards, to wit, on *Friday* next after fifteen days of *St. Hilary* in the twenty-eighth year of the reign of our ſaid lord the king, before our ſaid lord the king at *Weſtminſter*, comes the ſaid *Louiſe Po Line De Chaire*, otherwiſe called *Louiſe Pauline De Chaires*, by her attorney aforeſaid: *And* becauſe the ſaid *John Marſhall* hath neglected to bring the ſaid iſſue, ſo above joined, on to be tried, according to the courſe and practice of the ſaid court: *Therefore*, according to the form of the ſtatute in ſuch caſe lately made and provided, it is conſidered by the ſaid court of our ſaid lord the king now here, that the ſaid *John Marſhall* do take nothing by the ſaid bill; and that the ſaid *John Marſhall*

Judgment as in caſe of a nonſuit, purſuant to the late ſtatute, becauſe the plaintiff did not proceed to trial in due time.

B. R. Paſ. 27 Geo. 2. Rot. 485. Stat. 14 Geo. 2. c. 17.

ſhall, and his pledges of proſecuting, to wit, *John Doe* and *Richard Roe* be in mercy; and that the ſaid *Louiſe Po Line De Chaire*, otherwiſe called *Louiſe Pauline De Chaires*, go thereof without day, *&c.* *And* it is further conſidered by the ſaid court of our ſaid lord the king now here, that the ſaid *Louiſe Po Line De Chaire*, otherwiſe called *Louiſe Pauline De Chaires*, do recover againſt the ſaid *John Marſhall* ſeven pounds, adjudged by the ſaid court of our ſaid lord the king now here, according to the form of the ſaid ſtatute, to the ſaid *Louiſe Po Line De Chaire*, otherwiſe called *Louiſe Pauline De Chaires*, for her coſts and charges by her ſuſtained about her defence in this behalf; and that the ſaid *Louiſe De Po Line De Chaire*, otherwiſe called *Louiſe Pauline De Chaires*, have her execution againſt him for the ſame.

Non proſ. for default of declaring. Clift's Entr. 419.

Norwich, to wit, *Timothy Lodge* who was arreſted by writ of our lord the preſent king, of *latitat* iſſuing out of the court of our ſaid lord the preſent king, before the king himſelf at *Weſtminſter*, directed to the ſheriffs of *Norwich*, returnable before our ſaid lord the king at *Weſtminſter*, on *Saturday* next after fifteen days of *St. Martin*, in *Michaelmas* term in the eighth year of the reign of our ſaid lord the preſent king, at the ſuit of *Anthony Mingay* gent. in a plea of treſpaſs, appeared on the ſame day by *Roger Seaman* his attorney, according to the form of the ſtatute in ſuch caſe made and provided: *And* the ſaid *Anthony* did not exhibit in the ſame court of

of our ſaid lord the king, before the king himſelf, his bill or declaration in any perſonal action, or ejectment of farm, againſt the ſaid *Timothy*, before the end of the next term next after the appearance of the ſaid *Timothy*, at the ſuit of the ſaid *Anthony* ſo as aforeſaid entered, neither hath he further proſecuted againſt the ſaid *Timothy* upon his ſaid writ: *Therefore* it is conſidered, that the ſaid *Anthony* take nothing by his ſaid writ, but that he be thereupon in mercy, *&c.* *And* it is further conſidered, that the ſaid *Timothy* recover againſt the ſaid *Anthony* twenty and three ſhillings for his coſts and charges by him about his defence in this behalf ſuſtained, adjudged to the ſaid *Timothy* by the court of our ſaid lord the king now here by his aſſent according to the form of the ſtatute in ſuch caſe lately made and provided; and that the ſaid *Timothy* have execution thereof, *&c*

Stat. 13 Car. 2. ſt. 2. c. 2. ſ. 3. Stat. 23 H. 8. c. 15.

And now at this day, that is to ſay, *Friday* next after the morrow of the *Holy Trinity* in this ſame term, until which day the ſaid *D.* had leave to imparle to the ſaid bill, and then to anſwer thereto, before our lord the king at *Weſtminſter* come the ſaid *H.* and *A.* by their ſaid attorney; and the ſaid *D.* although at the ſame day ſolemnly demanded, does not come, but makes default, and does not ſay any thing in bar or denial of the ſaid action of the ſaid *H.* and *A.* whereby the ſaid *H* and *A.* remain therein undefended againſt the ſaid *D.* Therefore it is conſidered, that the ſaid

Judgment in debt by nil dicit, with an imparlance.

ſaid *H.* and *A.* recover againſt the ſaid *D.* their ſaid debt, and alſo five pounds for the damages which they have ſuſtained, as well by reaſon of detaining their ſaid debt, as for their coſts and charges by them expended about their ſuit in this behalf, adjudged to the ſaid *H.* and *A.* by the court of our ſaid lord the king now here, with their aſſent: And the ſaid *D.* in mercy, *&c.*

Judgment by nil dicit.

And the ſaid *A. B.* prays that the ſaid *C. D.* may anſwer to his ſaid declaration, upon which ——— next after —— next enſuing is given by the court here to the ſaid *C. D.* to plead in bar of the ſaid action: The ſame day is given to the ſaid *A. B.* at the ſame place, *&c.* At which day before our lord the king at *Weſtminſter* the ſaid *A. B.* came by his attorney aforeſaid, and the ſaid *C. D.* at that day, although ſolemnly demanded, came not to anſwer, nor did he ſay any thing in bar or preclusion, *&c.*

Judgment by nil dicit againſt a priſoner, with an imparlance.

And the ſaid *C. D.* in his proper perſon being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king before the king himſelf, comes and defends the force and injury, when, *&c.* and prays a day thereupon to imparle, *&c.* and it is granted to him, *&c.* and upon that a day is thereupon given to the ſaid parties before our lord the king at *Weſtminſter*, until —— next after —— [the day when the rule was out] in this ſame term, to wit, to the ſaid *C. D.* to imparl to the ſaid bill, and then to anſwer, *&c.* At which day before our ſaid lord the king at *Weſtminſter* the

the ſaid *A. B.* came by his attorney aforeſaid, and the ſaid *C. D.* although at that day ſolemnly demanded, came not, and ſaid nothing in bar or preclusion, *&c.*

Judgment in ejectment after verdict for the plaintiff.

Therefore it is conſidered, that the ſaid *T. E.* recover againſt the ſaid *B.* and *C.* his ſaid term yet to come of and in the ſaid tenements, with the appurtenances, and his ſaid damages aſſeſſed by the ſaid jury in form aforeſaid, and alſo, *&c.* [*ut in al'*] Which ſaid damages in the whole amount to, *&c.*

Judgment againſt baron and feme adminiſtratrix, in caſe.

Therefore it is conſidered, that the ſaid *M. B.* recover againſt the ſaid *M. C.* and *E.* his wife his ſaid debt, and his ſaid damages aſſeſſed by the ſaid jury in form aforeſaid; and alſo ſix pounds by the court here adjudged to the ſaid *M.* of increaſe for his ſaid coſts and charges, by his aſſent: Which ſaid damages in the whole amount to eight pounds and one ſhilling, to be levied of the goods and chattels which were of the ſaid *S. D.* at the time of her death in the hands of the ſaid *M. C.* and *E.* his wife to be adminiſtered, if they have ſo much thereof in their hands; and if they have not ſo much thereof in their hands, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *M.* and *E.*

Judgment in debt by relicta verificatione.

At which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid, and the ſheriff of the ſaid county did not ſend back the ſaid writ, nor did he any thing thereupon: And upon this

the

the ſaid *D.* * relinquiſhing the plea by him the ſaid *D.* as above pleaded, ſaith, that he cannot deny the action of the ſaid *P.* nor that the ſaid writing obligatory is his deed, nor that he oweth to the ſaid *P.* the ſaid ſum of 148 *l.* in manner and form as the ſaid *P.* above declares againſt him: Therefore it is conſidered, that the ſaid *P.* do recover againſt the ſaid *D.* the ſaid debt, and alſo 20 *l.* for his damages which he hath ſuſtained as well by reaſon of the detaining of the ſaid debt, as for his coſts and charges by him expended about his ſuit in this behalf, adjudged to the ſaid *P.* by the court of our ſaid lord the king now here, by his own aſſent: And the ſaid *D.* in mercy, *&c.*

Judgment for the plaintiff in treſpaſs and aſſault, where upon inſpection of the wound the court aſſeſſed damages over and above the damages aſſeſſed by the jury.

Therefore it is conſidered, that the ſaid *J. G.* recover againſt the ſaid *T. W.* his ſaid damages aſſeſſed by the ſaid jury in form aforeſaid, and alſo thirty and eight pounds by the court of our lord the king before the king himſelf, now adjudged to the ſaid *J. G.* at his requeſt, of increaſe for his damages in this behalf, for that it ſeems to the ſaid court,

* Ejectment. Plea, Not guilty. Then the defendant *relicta verificatione* confeſſed the action, and his attorney ſubſcribed the declaration accordingly. Motion, that the court would permit the plaintiff to enter judgment for himſelf. *Cur':* The defendant's attorney ought to come in proper perſon before the maſter of the office, and do it there; and though it was urged that the attorney could not come by any poſſibility, yet the motion was denied. *Trin.* 10 *W.* 3. *B. R.* 1 *R. Raym.* 345.

that

that the ſaid damages aſſeſſed by the ſaid jury in form aforeſaid are not ſufficient, for that it manifeſtly appears to the ſaid court upon inſpection of the eye of the ſaid *J. G.* that the ſaid *J. G.* by occaſion of the ſaid treſpaſs is very much injured in his ſaid eye; and alſo fifteen pounds ſix ſhillings and eight-pence for his coſts and charges by the ſaid court of our ſaid lord the king now here adjudged of increaſe to the ſaid *J.* by his aſſent: Which ſaid damages in the whole amount to ſixty and eight pounds.

At which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid, and the ſaid juſtices before whom the aſſiſes for the ſaid county were taken ſent here their record before them had in theſe words, to wit, Afterwards, *&c.* [the *Poſtea*] Therefore it is conſidered, that the ſaid *J.* recover againſt the ſaid *R.* the ſaid 7*l.* 10*s.* part of the ſaid debt of 19*l.* 19*s.* 6*d.* for the triple value of the ſaid tithes, and the ſaid damages, ſo as aforeſaid aſſeſſed by the ſaid jury; and alſo 19*l.* 19*s.* for the increaſe of his ſaid coſts and charges, adjudged by the ſaid court to the ſaid *J.* *by his aſſent, according to the form of the ſtatute in ſuch caſe made and provided:* Which ſaid damages amount in the whole to the ſum of 22*l.* and the ſaid *R.* is in the mercy of the court; and the ſaid *J.* is likewiſe in the mercy of the court for his falſe clamour againſt the ſaid *R.* as to the reſidue of the ſaid debt of 19*l.* 19*s.* 6*d.* whereof he is acquitted by the ſaid jury in

Judgment in debt on the ſtat. Ed. VI. for not ſetting out tithes, part for the plaintiff, and part for the defendant.

manner aforeſaid, and that the ſaid *R.* go thereof without day.

Judgment in debt for the plaintiff on a demurrer in abatement to a declaration.

At which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid: Whereupon the ſaid court having ſeen and fully underſtood all and ſingular the premiſſes, and having maturely deliberated thereupon, it appeared to the ſaid court now here, that the ſaid declaration of the ſaid maſter, wardens and commonalty, and the matter therein contained, are good and ſufficient in law for the ſaid maſter, wardens and commonalty, to have and maintain their ſaid action againſt the ſaid *T.* *Therefore* it is conſidered, that the ſaid maſter, wardens and commonalty, do recover againſt the ſaid *T.* their ſaid debt, and alſo eight pounds for their damages which they have ſuſtained, as well by reaſon of detaining that debt as for their coſts and charges by them expended about their ſuit in this behalf, adjudged to the ſaid maſter, wardens and commonalty by the court of our ſaid lord the king now here, with their aſſent; And the ſaid *T.* in mercy, *&c.*

Judgment for the plaintiff for coſts 8l. Stamp upon the paper-book, 11 Feb. 1741.

Judgment in debt for the plaintiffs on a demurrer to a plea in bar to a ſcire facias againſt an executor.

At which day come before our lord the king at *Weſtminſter* as well the ſaid *H. S.* and *J. S.* in their proper perſons, as the ſaid *T. H.* by his attorney aforeſaid; and hereupon all and ſingular the premiſſes having been ſeen and fully underſtood by the court of the now lord the king here, and due deliberation having been thereupon had, it appears to the court of our ſaid lord the king here, that the plea aforeſaid by the ſaid *T. H.* in manner and form

form aforeſaid above pleaded, and the matter therein contained, are not ſufficient in law to bar the ſaid *H. S.* and *J. S.* from having their ſaid execution againſt him for the debt and damages aforeſaid; Therefore it is conſidered, that the ſaid *H. S.* and *J. S.* have execution againſt the ſaid *T. H.* for the debt and damages aforeſaid, to be levied of the goods which were the ſaid *N. H.*'s at the time of his death, in the hands of the ſaid *T. H.* to be adminiſtered, according to the force, form and effect of the recovery aforeſaid; It is alſo conſidered, that the ſaid *H. S.* and *J. S.* recover againſt the ſaid *T. H.* 10*l.* for their coſts of ſuit, according to the form of the ſtatute in ſuch caſes made and provided; for that the ſaid *H. S.* and *J. S.* have obtained an award of the execution aforeſaid, after the ſaid plea pleaded by the ſaid *T. H.* in bar thereof, to be levied of the ſame goods and chattels, if the ſaid *T. H.* have ſo much thereof in his hands to be adminiſtered; and if he hath not, then the ſaid 10*l.* to be levied of the proper goods and chattels of the ſaid *T. H.* and that the ſaid *H. S.* and *J. S.* have alſo execution thereof, *&c.*

8 & 9 W. 3. c. 10. ſ. 3. 2 R. Raym. 1534. Lill. Ent. 404.

Therefore it is conſidered, that the ſaid *W.* take nothing by his ſaid bill, but that he be in the mercy of the court for his falſe clamour, and that the ſaid *D.* go thereof without day; And it is further conſidered, that the ſaid *D.* recover againſt the ſaid *P.* ——— for his coſts and charges laid out by him about his defence on this behalf, adjudged to the ſaid *D.* by the court of our ſaid lord the king now here, by

Judgment on a verdict for the defendant.

his own aſſent, according to the form of the ſtatute in ſuch caſe made and provided, and that the ſaid *D.* have execution thereof.

Judgment in ejectment, part for the plaintiff, and part for the defendant.

Therefore it is conſidered, that the ſaid *J. M.* do recover againſt the ſaid *W. H.* and *H.* his term aforeſaid yet to come and unexpired of and in the ſaid moiety of one meſſuage, one garden, ſixty acres of meadow, and ſixty acres of paſture, with the appurtenances in the firſt count in the ſaid declaration mentioned, and the ſaid damages ſo as aforeſaid aſſeſſed by the ſaid jury, and alſo 13 *l.* 19 *s.* for the increaſe of the ſaid coſts and charges, adjudged by the ſaid court to the ſaid *J.* at his own requeſt; which ſaid damages amount in the whole to the ſum of 16 *l.* and that the ſaid *J.* be in the mercy of the court for his falſe clamour againſt the ſaid *W. H.* and *H.* as to the treſpaſs and ejectment in the reſt of the tenements, with the appurtenances in the declaration aforeſaid ſpecified, whereof the ſaid *W. H.* and *H.* are by the ſaid jury in form aforeſaid acquitted, and that the aforeſaid *W. H.* and *H.* go thereof without day.

Judgment in debt, part for the plaintiff, part for the defendant.

Therefore it is conſidered, that the ſaid Sir *B.* do recover againſt the ſaid *W.* the ſaid ſum of 7 *l.* parcel of the ſaid debt of 40 *l.* found by the ſaid jury in manner aforeſaid, and the ſaid damages ſo as aforeſaid aſſeſſed by the ſaid jury, and alſo 27 *l.* 19 *s.* 6 *d.* for the increaſe of his ſaid coſts and charges, adjudged to the ſaid Sir *B.* by the ſaid court of our lord the king now here by his aſſent; which ſaid damages amount in the whole to 30 *l.* and that the ſaid *W.* be in the mercy of the court; and

and alſo that the ſaid Sir *B.* be in the mercy of the court for his falſe clamour againſt the ſaid *W.* as to the ſaid ſum of 33 *l.* reſidue of the ſaid debt of 40 *l.* whereof the ſaid *W.* is acquitted by the ſaid jury in manner aforeſaid, and that the ſaid *W.* go thereof without day.

Judgment in aſſault, part for the plaintiff, part for the defendant.

Therefore it is conſidered, that as to the firſt iſſue between the ſaid parties in form aforeſaid joined, the ſaid *J.* recover againſt the ſaid *W.* the ſaid damages ſo as aforeſaid aſſeſſed by the ſaid jury; and alſo 18 *l.* 19 *s.* for the increaſe of his ſaid coſts and charges, adjudged by the ſaid court to the ſaid *J.* at his requeſt; which ſaid damages amount in the whole to the ſum of 22 *l.* and that the ſaid *J.* be in the mercy of the court for his falſe claim againſt the ſaid *W.* as to the ſaid ſecond iſſue between the parties aforeſaid in form aforeſaid joined, whereof the ſaid *W.* is by the ſaid jury in form aforeſaid acquitted, and that the ſaid *W.* go thereof without day.

Judgment in ejectment for the plaintiff as to the ſecond demiſe, and for the defendant as to the firſt and third demiſe.

Therefore it is conſidered, that the ſaid *T. P.* do recover againſt the ſaid *C. B. J. B.* and *J. P.* his term aforeſaid, yet to come and unexpired, of and in the ſaid tenements, with the appurtenances, in the ſaid declaration ſecondly mentioned, and expreſſed to be demiſed by the ſaid *J. C.* and *M.* his wife; and the ſaid damages ſo as aforeſaid aſſeſſed by the ſaid jury, and alſo 13 *l.* 19 *s.* for the increaſe of his ſaid coſts and charges adjudged by the ſaid court to the ſaid *T. P.* at his requeſt, which ſaid damages amount in the whole to 16 *l.* And the ſaid *T. P.* is in mercy, *&c.* for his falſe claiming againſt the ſaid

C. B. J. B. and *J. P.* as to the treſpaſs and ejectment in the ſaid ſeveral tenements with the appurtenances in the ſaid declaration firſt above-mentioned; and alſo as to the treſpaſs and ejectment in the ſaid tenements with the appurtenances in the ſaid declaration thirdly mentioned, whereof the ſaid *C. B. J. B.* and *J. P.* are by the ſaid jury in manner aforeſaid acquitted; And let the ſaid *C. B. J. B.* and *J. P.* go thereof without day, *&c.*

Friday *next after the octave of the purification of the Bleſſed Virgin* Mary *in the fifteenth year of king* George *the ſecond.*

Rule by conſent in ejectment by original.

R. } IT is ordered, by the conſent of the
D. } attornies of both parties, that *J. B.* gent. *W. G. T. R. S. L. T. G.* and *J. S.* be made defendants in the ſtead of the now defendant *D.* and do forthwith appear at the ſuit of the plaintiff, and receive a declaration in an action of treſpaſs and ejectment for the premiſſes in queſtion, and forthwith plead thereto Not guilty; and upon the trial of the iſſue, confeſs leaſe, entry and ouſter, and inſiſt upon the title only; otherwiſe let judgment be entered for the plaintiff againſt the now defendant *D.* by default; and if upon the trial of the iſſue the ſaid *J. W. T. S. T.* and *J.* ſhall not confeſs leaſe, entry and ouſter, whereby the plaintiff ſhall not be able further to proſecute his writ againſt the ſaid *J. W.*

J. W. T. S. T. and *J.* then no coſt ſhall be allowed for not further proſecuting the ſame; but the ſaid *J. W. T. S. T.* and *J.* ſhall pay coſt to the plaintiff in that caſe to be taxed; And it is further ordered, that if upon the trial of the ſaid iſſue a verdict ſhall be given for the ſaid *J. W. T. S. T.* and *J.* or it ſhall happen that the ſaid plaintiff ſhall not further proſecute his ſaid writ for any other cauſe than for not confeſſing leaſe, entry and ouſter, then the leſſor of the plaintiff ſhall pay to the ſaid *J. W. T. S. T.* and *J.* coſts in that behalf to be adjudged.

By the court.

H. T. *FROM* which day the ſaid jury between the parties aforeſaid, of the plea aforeſaid, was thereupon reſpited between them before our lord the king at *Weſtminſter*, until *Monday* next after three weeks of *Eaſter* thence next enſuing, for default of the jurors, *&c.* At which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid, and the jurors of that jury being demanded, alſo come; who to ſpeak the truth of the premiſſes, being choſen, tried and ſworn, ſay upon their oath, as to the firſt iſſue between the ſaid *J. T.* and the ſaid Sir *C. H.* bart. above joined in form aforeſaid, that the ſaid *E. B.* at the time of executing the deed of bargain and ſale and releaſe above-mentioned, was of ſufficient memory and underſtanding to execute ſuch conveyance; Trial at bar. Verdict. As to the firſt iſſue.

As to the second issue.

And as to the second issue between the said *J. T.* and the said Sir *C. H.* bart. above also joined in form aforesaid, the said jury upon their said oath further say, that the said *E. B.* well understood the contents of the said deed of bargain and sale and release above-mentioned, and approved of them at the time of the execution thereof, as the said Sir *C. H.* by pleading for himself has above thereupon alledged; And as to the third issue between the said *J. T.* and the said *J. H.* also above joined in form aforesaid, the said jurors upon their said oath also further say, that the said *E. B.* at the time of executing the said lease above-mentioned, was of sufficient memory and understanding to execute such lease; And as to the fourth issue between the said *J. T.* and the said *J. H.* above also joined in form aforesaid, the said jurors upon their said oath further say, that the said *E. B.* well understood the contents of the said lease above-mentioned, and approved the same at the time of the execution thereof, as the said *J. H.* by pleading for himself has above thereupon alledged.

As to the third issue.

Fourth issue.

Trial at bar with a decem tales.

On which day the jury between the parties aforesaid, of the plea aforesaid, was respited between them before our lord the king, until *Wednesday* next after three weeks from *Easter* day thence next ensuing, for the default of the jurors; At which day before our lord the king at *Westminster* the said parties come by their attornies aforesaid, and the jurors of the jury above-mentioned being called, some of them, to wit, Sir *G. F.* bart. Sir *J. C.* bart. Sir

Sir *J. H.* bart. *N. W. R. L: J. D. H. S. J. B. H. J.* and *L. L.* eſquires, come, and the reſidue of the ſaid jury do not come, as appears in the panel: And becauſe the reſidue of the jurors of the ſaid jury did not appear, therefore let the ſaid jury further remain to be taken before our lord the king at *Weſtminſter*, until *Tueſday* next after five weeks from the feaſt-day of *Eaſter* then next following for the default of the jurors: Therefore let the ſheriff have their bodies, *&c.* and let him add ten other free and lawful men of the body of his county to make his ſaid jury, together with the ſaid other jury in form aforeſaid impanelled, ſo that he have them at the ſaid day for the default of the jurors not remaining to be taken, *&c.* The ſame day is given to the parties aforeſaid at the ſame place: At which day before our lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid, and the ſheriff at the ſame day returned the ſaid writ in all things ſerved and executed, together with a panel of the ſaid ten other free and lawful men, as appears in the panel, and the jurors ſo anew appointed, to wit, *G. D.* and *I. A.* being called likewiſe come, who to ſpeak the truth of the premiſſes, together with the ſaid jurors firſt for that purpoſe impanelled, being elected, tried and ſworn, ſay upon their oath, that the ſaid *W. J.* by will bearing date the eighteenth day of *January* in the year of our Lord 1731, did deviſe the ſaid above-mentioned premiſſes to the ſaid *M. S.* and they aſſeſs the damages of the ſaid *M.* by reaſon of the premiſſes, beſides

ſides her coſts and charges laid out by her about her ſuit in this behalf, to twelve pounds, and for thoſe coſts and charges to forty ſhillings.

Scire facias vic' London *againſt the tertenants of* F. R. *on a judgment recovered againſt him by* J. D. *Return* Nihil. Teſtatum Vic' Ebor'. Vic' non miſit breve. Alias ſci. fac. *Return* Sci. feci *to Sir* S. D. *tenant of part, and to* J. R. *tenant of other part.*

Judgment on a ſci. fac. againſt tertenants, where two are returned tenants, one making default, and the other pleads to iſſue. B.R.

AND now here at this day, to wit, the ſaid *Saturday* next after three weeks of *St. Michael*, before the lord the king at *Weſtminſter* came as well the ſaid *J. D.* by his attorney aforeſaid, as the ſaid Sir *J. D.* by *S. W.* his attorney, and the ſaid *J. R.* ſo ſummoned, *&c.* at the ſame day, being ſolemnly called, came not, but made default. *Therefore* it is conſidered, that the ſaid *J. D.* have execution againſt the ſaid *J. R.* of the debt and damages aforeſaid of the lands and tenements whereof the ſaid *J. R.* is above returned tenant, which were of the ſaid *F. R.* of which the ſaid *F. R.* was ſeiſed at the time of giving the ſaid judgment, being in the hands of the ſaid *J. R.* by the default of the ſaid *J. R.*

Elegit prayed againſt him,

And upon this the ſaid *J. D.* by the ſtatute, *&c.* chuſeth to be delivered to him a moiety of all the ſaid lands and tenements with the appur-

appurtenances, whereof the ſaid *J. R.* ſo as aforeſaid is returned tenant, which were of the ſaid *F. R.* at the time of giving the ſaid judgment, To hold to the ſaid *J. D.* and his aſſigns, as their freehold, according to the form of the ſtatute, until the debt and damages aforeſaid ſhall be thereof levied, and he prayeth the writ of the ſaid lord the king thereupon, to be directed to the ſaid ſheriff of *York*; *and* it is granted him, *&c.* returnable before the lord the king on *Saturday* next after the octave of the purification of the Bleſſed Virgin *Mary*, *&c.* and awarded.

And the ſaid Sir *J. D.* ſaith, *&c. At which day* before the lord the king at *Weſtminſter* the ſaid parties come by their attornies aforeſaid, upon which all and ſingular the premiſſes being ſeen and fully underſtood by the court of the ſaid lord the king here, and mature deliberation being held thereupon, it ſeemeth to the court of the ſaid lord the king here, that the plea of the ſaid *W. P.* above pleaded in bar of the ſaid action of the ſaid *D. W.* is not ſufficient in law to preclude the ſaid *D.* from having her ſaid action againſt the ſaid *W. P.* *Therefore* it is conſidered, that the ſaid *D.* recover againſt the ſaid *W.* her ſaid debt and alſo nine pounds for her damages which ſhe hath ſuſtained as well by the occaſion of the detaining that debt, as for her coſts and charges expended by her about her ſuit in this behalf adjudged by the court of the ſaid lord the king now here to the ſaid *D.* by her aſſent. And the ſaid *W. P.* in mercy, *&c.* The other defendant pleads judgment in debt for the plaintiff on a demurrer to a plea. B. R.

At

Judgment of reſpondeas ouſter on a demurrer to a plea in abatement in caſe. B. R.

At which day before the lord the king at *Weſtminſter* cometh as well the ſaid *T. S.* in his proper perſon, as the ſaid *T. K.* and *B.* by their attornies aforeſaid; upon which, all and ſingular the premiſſes being ſeen and by the court here fully underſtood, and mature deliberation being had thereupon, for that it ſeemeth to the ſaid court of the lord the king now here, that the ſaid plea above pleaded by the ſaid *T. K.* and *B.* in manner and form aforeſaid, and the matter in the ſame contained, are not ſufficient to quaſh the bill of the ſaid *T. S.* thereupon againſt the ſaid *T. K.* and *B.* *It is conſidered*, that the ſaid *T. K.* and *B.* anſwer further to the ſaid bill of the ſaid *T. S.* *And* upon this the ſaid *T. K.* and *B.* being ſolemnly demanded, come by *J. G.* their attorney, and defend the force and injury, when, *&c.* and pray, *&c.* [*Demurrer.*]

Judgment of reſpondeas ouſter on a demurrer to a replication on a plea in abatement. B. R.

At which day before the lord the king at *Weſtminſter* came the parties aforeſaid, by their attornies aforeſaid, whereupon all and ſingular the premiſſes aforeſaid being ſeen and by the court here fully underſtood, and mature deliberation being had thereupon, for that it ſeemeth to the ſaid court of the lord the king now here, that the ſaid plea by the ſaid *R.* in manner and form aforeſaid above in replying pleaded, and the matter therein contained, are good and ſufficient in law to compel the ſaid Sir *J.* to anſwer farther to the ſaid bill of the ſaid *R.* thereupon againſt the ſaid Sir *J.* *It is conſidered*, that the ſaid Sir *J.* anſwer further to the ſaid bill of the ſaid *R.* *And* hereupon the ſaid Sir *J. S.* knt.

knt. and bart. againſt whom the ſaid *R.* above declared, by the name of Sir *J. S.* bart. being ſolemnly called by the ſaid *H. T.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, *&c.*

At which day before our lord the king at *Weſtminſter* cometh the ſaid *D.* by his attorney aforeſaid, and the ſaid *P.* although called cometh not; and it appeareth to the court of our ſaid lord the king now here, that the ſaid *P.* hath neglected to bring the iſſue above joined on to be tried, according to the courſe and practice of the ſaid court of our ſaid lord the king now here: *Therefore* according to the form of the ſtatute in that caſe lately made and provided, it is conſidered by the ſaid court, that the ſaid *P.* take nothing by his aforeſaid bill, but that he and his pledges for proſecuting, *to wit*, *John Doe* and *Richard Roe*, be in mercy, *&c.* and that the ſaid *D.* go thereof without day; *and* it is further conſidered that the ſaid *D.* recover againſt the ſaid *P.* 7 *l.* for his coſts and charges by him about his defence in this behalf ſuſtained, adjudged by the court of our ſaid lord the king now here to the ſaid *D.* at his requeſt, according to the form of the ſtatute in the like caſe made and provided, and that the ſaid *D.* have execution thereof. *Afterwards*, *&c.* [the poſtea] *and* upon this the ſaid *W.* ſaith, that the court of our ſaid lord the king now here ought not to proceed to give judgment upon the ſaid verdict, becauſe he ſaith that the ſaid plea of the ſaid *A.* above in ſurrejoining pleaded is not ſufficient in law, and the

Judgment of non pros for not proceeding to trial. B. R.

Stat. 14 Geo. 2. c. 17.

Judgment of repleader after verdict for the plaintiff. B. R.

the iſſue ariſing thereupon is not aptly joined; upon which the ſaid plea by the ſaid *A.* above in ſurrejoining pleaded, and the iſſue thereupon joined, being ſeen and underſtood by the court of the ſaid lord the king before the king himſelf, it ſufficiently appeareth to the court of the ſaid lord the king, now here, that the ſaid plea above in ſurrejoining pleaded, is inſufficient, and that the iſſue ariſing thereupon is not aptly joined; upon which it is told to the ſaid parties to replead, to wit, to the ſaid *A.* to ſurrejoin anew to the ſaid rejoinder of the ſaid *W.* and that the ſaid parties further proceed thereupon until an iſſue by the law, or by the country, ſhall be thereupon joined. *Upon which* the ſaid *A.* as at firſt ſaith, *&c.*

Nolle proſequi after verdict as to two defendants. 3 Mod. 101. Carl. 19. Comb. 18, 39. 2 Snow. 469. Cro. Car. 54, 239, 243. 2 R. Abr. 100. 1 R. Rep. 30. 1 Bulſt. 157. Styles 297. 1 Sand. 275, 268. 2 Sand. 379. Raſt. Ent. 127. a. 654. b. 677. b 583. a. 555. a.

Caſe againſt E. S. T. P. *and* H. M. *for accuſing* G. R. *of high treaſon*; M. *lets judgment go by default, and the other two plead to iſſue*; *the jury give damages* 1000 l. *againſt* S. 500 l. *againſt* P. *and* 500 l. *againſt* M. *whereupon the plaintiff enters a* Nolle proſequi *as to* P. *and* M. *and has judgment againſt* S.

And upon this the ſaid *G.* in court here confeſſeth that he will not further proſecute againſt the ſaid *T. P.* and *H. M.* or either of them of the plea aforeſaid, but wholly diſavoweth and refuſeth to proſecute further againſt either of them in the premiſſes; *Therefore* it is conſidered that the ſaid *G. R.* recover

cover againſt the ſaid *E. S.* the ſaid damages aſſeſſed by the ſaid jury in form aforeſaid, and alſo by the court of the ſaid lord the king now here adjudged to the ſaid *G.* by his aſſent of increaſe for his ſaid coſts and charges; which ſaid damages in the whole amount to and that the ſaid *E. S.* be taken, *&c.*

Co. Ent. 650. Trin. 38 Eliz. ro. 634. Hil. 1 Car. ro. 582. Judgment againſt the 3d deft. B. R.

Poſteas.

John Hawe leſſee of *Joſhua Teſdale* againſt *William Burton* and *Mary* his wife.

Trin. 3 *Jac.* 2. *B. R. ro.* 1038.

AFterwards on the day and at the place within contained before Sir *R. H.* knt. one of the juſtices of the lord the king aſſigned to hold pleas before the king himſelf, and Sir *T. J.* knt. one of the barons of the *Exchequer* of the ſaid lord the king, juſtices of the ſaid lord the king, aſſigned to take the aſſiſes in the county of *B.* by form of the ſtatute, *&c.* cometh as well the within named *J. H.* as the within written *W. B.* and *M.* his wife by their attornies within contained; and the jurors of the jury, whereof mention is within made, being demanded, ſome

Poſtea, ſpecial verdict in ejectment. B. R. Comb. 84.

ſome of them, *to wit*, *N. P. T. P. R. B. J. F. T. P. R. L. R. W. R. J. T. H. J. P.* and *J. W.* come and are ſworn on that jury; and becauſe the reſidue of the jurors of that jury do not appear, therefore another of the perſons ſtanding around hereunto elected by the ſheriff of the county aforeſaid, is added a-new at the requeſt of the ſaid *J. H.* and by the command of the ſaid juſtices, whoſe name is affiled in the panel within written, according to the form of the ſtatute in ſuch caſe lately made and provided; and the juror ſo added a-new, *to wit*, *T. E.* being demanded alſo cometh, who together with the ſaid other jurors firſt impanelled and ſworn, being choſen, tried and ſworn to ſpeak the truth of the within contained, *ſay* upon their oath, that one *C T.* late huſband of the ſaid *M.* in his life-time, was ſeiſed of and in the tenements within written, with the appurtenances in his demeſne as of fee; and being ſo ſeiſed thereof, afterwards, and before the within written time in which it is ſuppoſed the treſpaſs and ejectment within written was done, *to wit*, on the 18th day of *October* in the 36th year of the reign of the lord *Charles* II. late king of *England*, *&c.* made his teſtament and laſt will in writing; and that the ſaid *C.* in his life-time then ſigned, ſealed, publiſhed and declared that teſtament before four lawful and credible witneſſes, and that that teſtament was then atteſted and ſubſcribed by the ſame four lawful and credible witneſſes in the preſence of the ſame *C. to wit*, at *A.* within written, as the

Tales.

Verdict. C. T. ſeiſed in fee.

Made his will.

the law requireth: And the ſaid *C.* by his ſaid teſtament gave to the ſaid *M.* the tenements within written amongſt others, in ſpecial tail, the tenor of which ſaid laſt will of the ſaid *C.* followeth in theſe words, *In the name of God*, &c. [the will *in hæc verba*] And the ſaid jurors upon their ſaid oath further ſay, that the ſaid *C.* in his life-time, at the ſaid time of making and publiſhing his ſaid teſtament was within the age of 21 years, *to wit*, of the age of 20 years, and not more; *and* that the ſaid *C.* in his life-time afterwards, being of the age of 21 years and more, he a-new publiſhed and declared his ſaid teſtament made as aforeſaid, to ſtand and be his laſt will, in the preſence of three legal credible witneſſes then there preſent, as the law requireth, *to wit*, at the pariſh within written; but the teſtament of the ſaid *C.* was not then produced before the ſame witneſſes, neither did the ſame witneſſes then and there ſubſcribe their names to the teſtification and publication of the ſame; and that afterwards the ſaid *C.* died, being ſeiſed of the ſame tenements as aforeſaid. *And* the ſaid jury upon their ſaid oath further ſay, that the within named *J. T.* is couſin and heir of the ſaid *C.* *And* the ſaid jury upon their ſaid oath further ſay, that the ſaid *M.* now defendant was wife of the ſaid *C.* in his life-time, after whoſe death ſhe entered into the within written tenements, and was ſeiſed thereof, as the law requireth: *And* afterwards the ſaid *M.* was joined in wedlock with the ſaid *W. B.* and afterwards the ſaid *W.*

Gave to the defendant M. in tail.

The will.

Teſtator then under 21.

Republiſhed at his full age.

In the preſence of three witneſſes.

But the will not produced, neither did the witneſſes ſubſcribe their names.

Teſtator died ſeiſed.

Leſſor of plt. heir of reſtator.

Defendant.

M. entered.

Married with the other defendant who entered in her right.

W. entered into the within written tenements with the appurtenances, and was ſeiſed thereof in the right of the ſaid *M.* as the law requireth. *And* the ſaid *W.* and *M.* ſo ſeiſed, and afterwards and before the within written time in which, *&c.* the ſaid *J. T.* entered into the tenements within written, with the appurtenances, and was ſeiſed thereof as the law requireth; and being ſo ſeiſed thereof, the ſaid *J.* afterwards, to wit, on the within written 1ſt day of *October* in the 2d year of the reign of the lord *James* II. then king of *England*, *&c.* at *A.* within written, demiſed, granted, and to farm let to the ſaid *J. H.* the tenements within written with the appurtenances, To have and to hold the tenements within written with the appurtenances to the ſaid *J. H.* and his aſſigns from the feaſt of *St. Michael* the Archangel then laſt paſt until the full end and term of ſeven years thence next following fully to be complete and ended: *By* virtue of which ſaid demiſe the ſaid *J. H.* entered into the within written tenements with the appurtenances, and was poſſeſſed thereof, as the law requireth, until the ſaid *W. B.* and *M.* afterwards, *to wit*, on the ſaid 1ſt day of *October* in the 2d year aboveſaid, at *A.* aforeſaid, with force and arms, *&c.* entered into the tenements within written, with the appurtenances, in and upon the poſſeſſion of the ſaid *J. H.* thereof, and him the ſaid *J. H.* from his ſaid farm, his ſaid term therein not yet ended, ejected, drove out and amoved, as the ſaid *J. H.* within complaineth againſt

Leſſor of the plt. entered.

Leaſes to the plaintiff.

Plt. enters.

Ejected by defendants.

againſt them. *But whether* upon the whole matter aforeſaid above found in form aforeſaid, the ſaid *W.* and *M.* are guilty in law of the treſpaſs and ejectment aforeſaid or not, the ſaid jurors are intirely ignorant, and pray the advice of the court here. *And if* upon the whole matter aforeſaid found in form aforeſaid, it ſhall ſeem to the court here, that the ſaid *W.* and *M.* are guilty in law of the treſpaſs and ejectment within written, *then* the ſaid jurors ſay, upon their ſaid oath, that the ſaid *W.* and *M.* are guilty of the ſaid treſpaſs and ejectment, as the ſaid *J. H.* within complaineth againſt them: And they aſſeſs the damages of the ſaid *J.* on that occaſion, beſides his coſts and charges expended by him about his ſuit in this behalf to 6*d.* and for thoſe coſts and charges to 40*s.* *And if* upon the whole matter aforeſaid above found in form aforeſaid, it ſhall ſeem to the court here that the ſaid *W.* and *M.* are not guilty in law of the treſpaſs and ejectment aforeſaid, *then* the ſaid jurors ſay upon their ſaid oath, that the ſaid *W.* and *M.* are not guilty of the treſpaſs and ejectment aforeſaid, as they within in pleading for themſelves have alledged.

Replevin.

B R. Declaration in replevin. Lil. Ent. 356.

Middleſex, to wit. R. *H.* was ſummoned to anſwer *R. H.* of a plea, wherefore he took the goods and chattels of the ſaid *R. H.* and them unjuſtly detained againſt gages and pledges until, *&c.* *And* whereupon the ſaid *R. H.* by *J. P.* his attorney complains, that the ſaid *R. H.* on the ſeventh day of *October* in the ſecond year of the reign of our ſovereign lord and lady *William* and *Mary* now king and queen of *England*, *&c.* at the pariſh of *St. Margaret, Weſtminſter*, in the county aforeſaid, in a certain place there called *Peter-ſtreet*, took the goods and chattels following, to wit, one jack, two ſpits, eighteen pewter plates, *&c.* (reciting the other particulars) of the ſaid *R. H.* and them unjuſtly detained againſt gages and pledges until, *&c.* Wherefore the ſaid *R. H.* ſays, that he is injured, and has damages to the value of twenty pounds: And thereupon he brings ſuit, *&c.*

Avowry for rent arrear.

And the ſaid *R. H.* by *K.* his attorney, comes and defends the force and injury, when, *&c.* and well avows the taking the ſaid goods and chattels in the ſaid place, in which, *&c.* and juſtly, *&c.* becauſe he ſays that the ſame place, in which the taking the ſaid goods and chattels is ſuppoſed to be done, contains, and at the ſame time in which the taking the ſaid goods and chattels is ſuppoſed to be done, contained in itſelf a certain piece or parcel of land

land with the appurtenances in the place called *Peter-ſtreet* aforeſaid, otherwiſe *Bowling-alley*, at the pariſh of *St. Margaret Weſtminſter* aforeſaid, in the county aforeſaid; of which ſaid piece or parcel of land, with the appurtenances before the ſaid time, in which, &c. one Sir *R. M.* knt. was ſeiſed in his demeſne as of fee; and being ſo ſeiſed the ſaid Sir *R.* before the ſaid time in which, &c. to wit, on the ſixteenth day of *May* in the firſt year of the reign of our lord and lady the preſent king and queen, at the pariſh of *St. Margaret Weſtminſter* aforeſaid, in the county aforeſaid, demiſed the ſaid piece or parcel of land, with the appurtenances, to the ſaid *R. H.* To hold to the ſaid *R.* and his aſſigns from the feaſt day of the annunciation of the Bleſſed Virgin *Mary* then laſt paſt, before the date of the ſaid leaſe, for the term of fifty and one years thence next enſuing and fully to be complete and ended; by virtue of which ſaid demiſe the ſaid *R. H.* was poſſeſſed of the ſaid piece or parcel of land for the term aforeſaid; and being ſo thereof poſſeſſed, the ſaid *R. H.* afterwards and before the ſaid time in which, &c. erected and built a meſſuage or tenement upon the ſaid piece or parcel of land, and was thereof poſſeſſed; and being ſo thereof poſſeſſed he the ſaid *R. H.* before the ſaid time in which, &c. to wit, on the twentieth day of *December* in the ſaid firſt year of the reign of our ſaid lord and lady the preſent king and queen, demiſed the ſaid meſſuage with the appurtenances, to the ſaid *R. H.* from the feaſt of the birth of our Lord then next following, for the term of one year thence next enſuing

ſully to be complete and ended: Yielding therefore for the ſaid year to the ſaid *R. H.* or his aſſigns, the rent of fifteen pounds of lawful money of *England* at the four moſt uſual feaſts in the year, to wit, at the feaſt of the annunciation of the Bleſſed Virgin *Mary*, the nativity of *St. John* the Baptiſt, *St. Michael* the Archangel, and the nativity of our Lord by even and equal portions: By virtue of which ſaid demiſe the ſaid *R. H.* entered into the ſaid meſſuage with the appurtenances, and was poſſeſſed thereof, and occupied the ſaid meſſuage with the appurtenances by the ſpace of three quarters of a year: And becauſe the ſum of 11 *l.* 5 *s.* of the ſaid rent after the ſaid demiſe ſo made, for the ſaid three quarters of a year, at the feaſt of *St. Michael* laſt paſt and before the taking the ſaid goods and chattels, were in arrear and unpaid to the ſaid *R. H.* the ſaid *R. H.* well avows the taking the ſaid goods and chattels in the ſaid place, in which, &c. and juſtly, &c. for the ſaid 11 *l.* 5 *s.* being in arrear to the ſaid *R. H.* in form aforeſaid, as in the ſaid meſſuage with the appurtenances bound and liable to the diſtreſs of the ſaid *R. H.* in form aforeſaid: And this he is ready to verify: Wherefore he prays judgment, and a return of the ſaid goods and chattels to be adjudged to him, &c.

Replication no rent arrear.

And the ſaid *R. H.* ſays, that the ſaid *R. H.* by the reaſon before alledged, ought not to well avow the taking the goods and chattels aforeſaid in the ſaid place, in which, &c. becauſe he ſays, that the ſaid 11 *l.* 5 *s.* or any part thereof, of the rent aforeſaid at the ſaid time in which, &c. was not in arrear

or

or unpaid to the ſaid *R. H.* as the ſaid *R. H.* in his ſaid avowry has above alledged: And this he prays may be inquired of by the country: *And* the ſaid *R. H.* does ſo likewiſe, *&c.* Iſſue.

Therefore it is commanded to the ſheriff, that he cauſe to come before our lord the king and lady the queen from the day of the *Holy Trinity* in three weeks whereſoever, *&c.* twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the ſaid parties, *&c.* Venire awarded.

At which day before our lord the king and lady the queen at *Weſtminſter* the ſaid parties came by their attornies aforeſaid, and the ſheriff did not ſend the writ, nor did he do any thing thereupon: *Therefore* as before it is commanded to the ſheriff, that he cauſe to come before our lord the king and lady the queen from the day of *St. Michael* in three weeks whereſoever, *&c.* twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the ſaid parties, *&c.* Vic' non miſit breve. Award of venire de novo.

Mich. 9 *W.* *Roll* 48.

Middleſex, *to wit.* *J.* *T. R. W.* and *W. S.* were ſummoned to anſwer *J. W.* of a plea, wherefore they took a ſilver porringer of the ſaid *J.*'s and unjuſtly detained the ſame againſt gages and pledges, *&c.* *And whereupon* the ſaid *T.* by *J. L.* his attorney complains that the ſaid *J. R.* and *W.* on the firſt day of *May* in the ninth year of the reign Declaration in replevin. Lill. Ent. 349. Pr. Reg. 157.

of our lord *William* the third now king of *England*, &c. in the *Charter-houſe* in the county of *Middleſex* aforeſaid, in a certain place there called the dwelling houſe of the ſaid *T.* took the ſaid cup of the ſaid *T.* and unjuſtly detained it againſt gages and pledges and until, &c. Wherefore the ſaid *T.* ſays, that he is injured, and hath damage to the value of 30 *l.* and thereupon he brings ſuit, &c.

Cognizance a diſtreſs for poors rate.

And the ſaid *J. R.* and *W.* by *R. H.* their attorney come and defend the force and injury, when, &c. and well acknowledge the taking the ſaid cup in the ſaid place in which, &c. and juſtly, &c. becauſe they ſay, that at the ſaid time in which, &c. the ſaid *J.* and *R.* being overſeers of the poor of the pariſh of *St. Sepulchre* in the ſaid county of *Middleſex*, by virtue of a warrant under the hands and ſeals of *W. W.* eſq; and *T. S.* eſq; two juſtices of our lord the preſent king, aſſigned to keep the peace in the county aforeſaid (of whom one, &c.) directed to the church-wardens and overſeers of the poor of the ſaid pariſh, or any of them, at the ſaid place in which, &c. demanded of the ſaid *T. W.* to pay to them 10 *s.* 6 *d.* of lawful money duly charged upon him towards the relief of the poor of the ſaid pariſh, by authority, and according to the tenor, purport and effect of a certain ſtatute lately made and provided in a parliament of our lady queen *Elizabeth* held at *Weſtminſter* in the county of *Middleſex* in the forty-third year of her reign; and becauſe the ſaid *T.* then and there refuſed to pay to the

Stat. 43 Eliz. c. 2. ſ. 19.

the ſaid *J.* and *R.* the ſaid 10*s.* 6*d.* the ſaid *J.* and *R.* as overſeers of the ſaid poor, and the ſaid *W.* at their requeſt and in their aid for keeping the peace of our ſaid lord the king (the ſaid *W.* being then a conſtable within the ſaid pariſh) by force of the ſtatute and warrant aforeſaid, well avow the taking the ſaid cup at the ſaid time in which, *&c.* in the ſaid place in which, *&c.* in the name of a diſtreſs for the ſaid 10*s.* 6*d.* charged as aforeſaid upon the ſaid *T.* towards the relief of the poor of the ſaid pariſh, then being in arrear and unpaid, and juſtly, *&c.* And this they are ready to verify: Wherefore they pray judgment, and a return of the ſaid cup to be adjudged to them, *&c.*

And the ſaid *T.* ſays, that the ſaid *J. R.* and *W.* by the reaſon before alledged, ought not to acknowledge the taking the ſaid cup of the ſaid *T.* in the ſaid place in which, *&c.* as juſt, becauſe he ſays, that the ſaid *J. R.* and *W.* on the day and year aforeſaid in the ſaid declaration mentioned, of their own proper injury, without the cauſe by them in their ſaid avowry above mentioned, took the ſaid cup of the ſaid *T.* in the ſaid place in which, *&c.* and unjuſtly detain it againſt gages and pledges, *&c.* in manner and form as the ſaid *T.* above complains againſt them: And this he prays may be inquired of by the country: *And* the ſaid *J. R.* and *W.* do ſo likewiſe, *&c.* Therefore, *&c.* Replication de injuria ſua propria. Iſſue.

Kent,

Memorandum of a plaint in replevin in the county court. Lill. Ent. 349.

Kent, *to wit.* BE *it remembered*, that *T. J.* and *J. J.* heretofore in the court of the ſheriff of the county of *Kent* held at *Penenden* in the ſame county, complained againſt *W. L.* of a plea of taking and unjuſtly detaining the goods and chattels of the ſaid *T.* and *J.* and they found pledges for proſecuting, and alſo for returning the ſaid goods and chattels, if a return ſhould be thereupon adjudged, to wit, *J. J.* and *T. C.* which ſaid plaint at the prayer of the ſaid *W.* by virtue of the writ of our lady the queen of *recordari facias loquelam*, was had before our lady the queen at *Weſtminſter* on the morrow of the Aſcenſion of our Lord laſt paſt; and the proceſs thereupon being continued unto this day, to wit, to the morrow of the *Holy Trinity* in this ſame term, now at this day before our lady the queen at *Weſtminſter* come as well the ſaid *T.* and *J.* by *T. P.* their attorney, as the ſaid *W. L.* by *J. W.* his attorney; *And* upon this the ſaid *T.* and *J.* complain of the ſaid *W.* of a plea, to wit, that the ſaid *W.* on the twentieth day of *February* in the fourth year of the reign of our lady *Anne*, now queen of *England*, *&c.* at the pariſh of *Warden* in the county aforeſaid, in a certain place there called the *ſea ſhore*, took the goods and chattels of the ſaid *T.* and *J.* to wit, 580 bars of iron, and them unjuſtly detained againſt gages and pledges, until, *&c.* Wherefore they ſay that they are injured, and have damage to the value of 450 *l.* And thereupon they bring ſuit, *&c.*

Removed by recordari into B. R.

Declaration.

And

And the ſaid *W.* by *J. W.* his attorney, comes and defends the force and injury, when, *&c.* and well avows the taking the goods and chattels in the ſaid declaration above-mentioned in the ſaid place in which, *&c.* and the detaining thereof, *&c.* and juſtly, *&c.* becauſe he ſays, that the ſaid goods and chattels, together with certain other goods and chattels before the ſaid time in which, *&c.* to wit, on the fifteenth day of *November* in the fourth year of the reign of our lady *Anne*, now queen of *England*, *&c.* at *Gottenburgh* in the kingdom of *Sweden* in parts beyond the ſeas, were loaden on board a certain ſhip called the *Corn Drogger* of *Gottenburgh* aforeſaid in the kingdom of *Sweden* aforeſaid, then floating in and upon the high ſeas near the iſle of *Sheppey* in the county of *Kent* aforeſaid; and that the ſaid ſhip ſo as aforeſaid floating there, afterwards, to wit, on the ſame day and year, a great ſtorm aroſe there, and ſo violently drove the ſaid ſhip on the ſhore of the ſaid iſland, to wit, at the pariſh of *Walden* in the county aforeſaid, that the ſaid ſhip, and alſo all the ſaid goods and chattels then loaden on board the ſame as aforeſaid, and alſo all the men and perſons then and there being in the ſame ſhip, were then and there almoſt ſunk, and in great danger of intirely periſhing, ſo that the ſaid men and all other perſons in the ſaid ſhip, who then and there had the care and ought to have taken care of the ſaid ſhip, or of the ſaid goods and chattels, to preſerve themſelves then

Avowry for ſalvage.

Memorandum of a plaint in replevin in the county court. Lill. Ent. 349.

Kent, BE *it remembered*, that *T. J.* and *to wit.* *J. J.* heretofore in the court of the ſheriff of the county of *Kent* held at *Penenden* in the ſame county, complained againſt *W. L.* of a plea of taking and unjuſtly detaining the goods and chattels of the ſaid *T.* and *J.* and they found pledges for proſecuting, and alſo for returning the ſaid goods and chattels, if a return ſhould be thereupon adjudged, to wit, *J. J.* and *T. C.* which ſaid plaint at the prayer of the ſaid *W.* by virtue of the writ of our lady the queen of *recordari facias loquelam*, was had before our lady the queen at *Weſtminſter* on the morrow of the Aſcenſion of our Lord laſt paſt; and the proceſs thereupon being continued unto this day, to wit, to the morrow of the *Holy Trinity* in this ſame term, now at this day before our lady the queen at *Weſtminſter* come as well the ſaid *T.* and *J.* by *T. P.* their attorney, as the ſaid *W. L.* by *J. W.* his attorney; *And* upon this the ſaid *T.* and *J.* complain of the ſaid *W.* of a plea, to wit, that the ſaid *W.* on the twentieth day of *February* in the fourth year of the reign of our lady *Anne*, now queen of *England*, *&c.* at the pariſh of *Warden* in the couhty aforeſaid, in a certain place there called the *ſea ſhore*, took the goods and chattels of the ſaid *T.* and *J.* to wit, 580 bars of iron, and them unjuſtly detained againſt gages and pledges, until, *&c.* Wherefore they ſay that they are injured, and have damage to the value of 450*l.* And thereupon they bring ſuit, *&c.*

Removed by recordari into B. R.

Declaration.

And

And the ſaid *W.* by *J. W.* his attorney, comes and defends the force and injury, when, *&c.* and well avows the taking the goods and chattels in the ſaid declaration abovementioned in the ſaid place in which, *&c.* and the detaining thereof, *&c.* and juſtly, *&c.* becauſe he ſays, that the ſaid goods and chattels, together with certain other goods and chattels before the ſaid time in which, *&c.* to wit, on the fifteenth day of *November* in the fourth year of the reign of our lady *Anne*, now queen of *England*, *&c.* at *Gottenburgh* in the kingdom of *Sweden* in parts beyond the ſeas, were loaden on board a certain ſhip called the *Corn Drogger* of *Gottenburgh* aforeſaid in the kingdom of *Sweden* aforeſaid, then floating in and upon the high ſeas near the iſle of *Sheppey* in the county of *Kent* aforeſaid; and that the ſaid ſhip ſo as aforeſaid floating there, afterwards, to wit, on the ſame day and year, a great ſtorm aroſe there, and ſo violently drove the ſaid ſhip on the ſhore of the ſaid iſland, to wit, at the pariſh of *Walden* in the county aforeſaid, that the ſaid ſhip, and alſo all the ſaid goods and chattels then loaden on board the ſame as aforeſaid, and alſo all the men and perſons then and there being in the ſame ſhip, were then and there almoſt ſunk, and in great danger of intirely periſhing, ſo that the ſaid men and all other perſons in the ſaid ſhip, who then and there had the care and ought to have taken care of the ſaid ſhip, or of the ſaid goods and chattels, to preſerve themſelves then

Avowry for ſalvage.

then and there deſerted and left the ſaid ſhip, together with all the ſaid goods and chattels on board the ſame: And the ſaid *W.* further ſays, that afterwards, to wit, on the ſame day and year, certain perſons unknown, with force and arms, in the night-time, entered into the ſaid ſhip then drove upon the ſaid ſhore almoſt wrecked, and then and there ſtole and feloniouſly took and carried away certain goods and chattels, parcel of the other goods and chattels abovementioned, of which the ſaid *W.* afterwards, to wit, on the twenty-eighth day of *November* aforeſaid, at the pariſh aforeſaid, having notice, and then not knowing to what perſon or perſons the ſaid goods and chattels then belonged, and obſerving that no body then and there took care to preſerve the ſame, and the ſaid ſhip being in danger of periſhing, and of being broke to pieces, to preſerve the ſaid goods and chattels in the ſaid declaration abovementioned, leſt the ſame ſhould be ſtole or loſt, with great danger and labour of himſelf and of his ſervants, and at a great expence by him the ſaid *W.* then and there on that occaſion neceſſarily expended, procured the ſaid goods and chattels to be removed out of the ſaid ſhip into a certain houſe in the ſaid iſland of *Sheppey*, and cauſed the ſame to be there ſafely and ſecurely kept, until, *&c.* And the ſaid *W.* in fact ſays, that for the ſaid labour and expences he the ſaid *W.* then and there reaſonably deſerved to have the ſum of 150 *l.* of good and lawful money of *England*; and that

after-

afterwards, to wit, on the firſt day of *December* in the fourth year aforeſaid, at the pariſh aforeſaid, the ſaid *W.* then firſt knowing that the ſaid goods and chattels belonged to the ſaid *T.* and *J.* gave notice to the ſaid *T.* and *J.* of all the premiſſes, and then and there requeſted the ſaid *T.* and *J.* to pay to him the ſaid *W.* the ſaid 150 *l.* for the ſaid labour and expence, and then and there offered to the ſaid *T.* and *J.* upon payment thereof to deliver to the ſaid *T.* and *J.* all the ſaid goods and chattels in the ſaid declaration mentioned; but the ſaid *T.* and *J.* then and there intirely refuſed, and ſtill refuſe to pay to the ſaid *W.* the ſaid 150 *l.* or any part thereof, although the ſaid *T.* and *J.* were often afterwards required by the ſaid *W.* to pay the ſame: Wherefore the ſaid *W.* took as aforeſaid, and detained the ſaid goods and chattels until, *&c.* as it was lawful for him: And this he is ready to verify: Wherefore he prays judgment, and a return of the ſaid goods and chattels, together with his damages, coſts and charges to be adjudged to him, *&c.*

Replication de injuria ſua propria.

And the ſaid *T.* and *J* ſay, that the ſaid *W.* ought not by the reaſon before alledged to avow the taking the ſaid goods and chattels in the place in which, *&c.* to be juſt, becauſe they ſay that the ſaid *W.* on the twentieth day of *February* in the ſaid fourth year of the reign of our lady queen *Anne*, in the declaration of the ſaid *T.* and *J.* above ſpecified, of his own proper injury, and without

without any ſuch cauſe as by the ſaid *W.* in his ſaid avowry is alledged, and the ſaid place in which, *&c.* took the ſaid goods and chattels of the ſaid *T.* and *J.* in the declaration of the ſaid *T.* and *J.* above ſpecified, and unjuſtly detained them againſt gages and pledges, until, *&c.* in manner and form as the ſaid *T.* and *J.* in their ſaid declaration complain againſt him: and this they pray may be inquired of by the country; *And* the ſaid *W.* does ſo likewiſe, *&c. Therefore* it is commanded to the ſheriff, that he cauſe to come before our lady the queen * from the day of *St. Michael* in three weeks whereſoever, *&c.* twelve, *&c.* by whom, *&c.* and who neither, *&c.* to take cognizance, *&c.* becauſe as well, *&c.* The ſame day is given to the ſaid parties, *&c. Before* which day, to wit, on the 17th day of *July* in the 5th year of the reign of our ſaid lady the preſent queen the ſaid *T.* died, and the ſaid *J.* ſurvived him; *And* now at this day before our ſaid lady the queen at *Weſtminſter* the ſaid *J.* and *W.* come by their attornies aforeſaid; and the ſaid ſheriff did not ſend the ſaid writ, nor did he do any thing thereupon: *Therefore*, as before, it is commanded to the ſheriff of the county aforeſaid, that he cauſe to come before our ſaid lady the queen on the octave of *St. Hilary*, whereſoever, *&c.* twelve, *&c.* by whom, *&c.* and who neither, *&c.*

Iſſue.

Venire awarded.

Suggeſtion of the death of one of the plaintiffs.

Vic' non miſit breve.

Alias venire awarded.

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* No ſuch return. See *Vol.* 1. *p.* —.

to

to take cognizance, &c. becauſe as well, &c. The ſame day is given to the ſaid parties, &c.

Pleas before our lord the king at Weſtminſter, *of the term of* Holy Trinity *in the twenty-ninth year of the reign of our ſovereign lord* Charles *the ſecond, now king of* England, &c. Niſi prius record.

City of Coventry, to wit. J. B. late of *Wikin* in the county and city of *Coventry* aforeſaid, yeoman, was ſummoned to anſwer *M.* lady *D.* widow, of a plea wherefore he took the cattle of the ſaid *M.* and them unjuſtly detained againſt gages and pledges, &c. *And whereupon* the ſaid *M.* by *H. O.* her attorney, complains that the ſaid *T.* on the 23d day of *October* in the twenty-eighth year of the reign of our ſovereign lord *Charles* the ſecond now king of *England*, &c. at the city of *Coventry* in the county of the ſame city, in the king's highway there took the cattle of the ſaid lady *M.* to wit, five oxen and one heifer, and them unjuſtly detained againſt gages and pledges, until, &c. Whereupon the ſaid lady *M.* ſays that ſhe is injured, and has damage to the value of twenty pounds: And thereupon ſhe brings ſuit, &c. B. R. Declaration in replevin. Lill. Ent. 357.

And the ſaid *T. B.* by *G. A.* his attorney, comes and defends the force and injury, when, &c. Plea property in a ſtranger. Salk. 5.

&c. and ſays, *that at the time the ſaid cattle are ſuppoſed to have been taken, the property of thoſe cattle was in one *R. C.* widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits, which were of *W. C.* her late huſband deceaſed, at the time of his death; *without this*, that the property of the ſaid cattle, at the time of the taking of them, was in the ſaid lady *M. D.* as ſhe by her ſaid writ and declaration above thereupon ſuppoſes: And this he is ready to verify: Wherefore he prays judgment of the ſaid writ and declaration, and a return of the ſaid cattle to be adjudged to him, &c.

Traverſe.

Replication. *And* the ſaid *M.* lady *D.* ſays, that her ſaid writ and declaration ought not to be quaſhed, becauſe ſhe ſays, that the property of the ſaid cattle, at the ſaid time of taking them, was in her the ſaid *M.* lady *D.* in manner and form as ſhe by her writ and declaration aforeſaid has

* Replevin. The defendant avows the taking, as the goods *ipſius defendentis*, and concludes with *petit judicium et retorn' &c.* Demurrer for that the defendant does not traverſe the property of the plaintiff. *Curia:* It will be good both ways; the defendant might have pleaded property in abatement or in bar, and it would have been good without a traverſe, and upon that iſſue ſhould have been joined. And therefore when the defendant makes cognizance, or avows that the property is in the defendant, it ſeems to be ſufficient; for the defendant cannot conclude to the country, but the plaintiff ought to reply, and upon that replication iſſue ſhall be joined, and the property of the plaintiff muſt be proved. *Trin.* 2 *Geo.* 1. *C. B. Loweday* v. *Mitchel*, *Com. Rep.* 247.

there-

thereupon above alledged, to wit, at the city of *Coventry* aforeſaid in the county of the ſame city: And ſhe prays that this may be inquired of by the country: *And* the ſaid *T. B.* does ſo likewiſe: Therefore it is commanded to the ſheriff, that he cauſe to come before our lord the king from the day of the *Holy Trinity* in three weeks, whereſoever, *&c.* twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, *&c.* Iſſue. Venire awarded.

Pleas before our lord the king at Weſtminſter, *of the term of the* Holy Trinity, *in the twenty-ninth year of the reign of our ſovereign lord* Charles *the ſecond, now king of* England, *&c.*

City of Coventry, to wit. THE jury between *M.* lady *D.* widow, by her attorney, plaintiff, and *T. B.* late of *Wikin* in the county of the city of *Coventry* aforeſaid, yeoman, of a plea of taking and detaining cattle, *&c.* are reſpited before our lord the king until in eight days of *Saint Martin*, whereſoever, *&c.* unleſs the juſtices of our lord the king, aſſigned to take the aſſiſes in the county of the ſaid city, ſhall firſt come on *Wedneſday* the twenty-fifth day of *July* at the city of *Coventry* aforeſaid in Jurat.

the county of the ſame city, by form of the ſtatute, &c. for default of the jurors, &c. Therefore let the ſheriffs have the bodies, &c. The ſame day is given to the ſaid parties, &c.

Le ſciendum. *And* be it known, that the writ of our lord the king thereupon, on the fourth day of *July* in this ſame term, before our lord the king at *Weſtminſter*, is delivered to the under-ſheriff of the county of the city of *Coventry* aforeſaid, to be executed in form of law at his peril, &c.

Non prof. in replevin. Lill. Ent. 347.

Suſſex, *to wit.* BE *it remembered*, That *M. G.* the elder heretofore, to wit, at the county court of *Suſſex*, held at *Lewes* for the county aforeſaid, on the fourteenth day of *May* in the twelfth year of the reign of our ſovereign lady *Anne*, by the grace of God, of *Great Britain*, &c. before *S. W.* and *S. W.* ſuitors of the ſame court, complained againſt *W. A.* gent. of a plea of taking and unjuſtly detaining the cattle of the ſaid *M.* to wit, eight ewes and ſix lambs; *which* ſaid plaint, by virtue of the writ of our lady the queen of *recordari facias loquelam*, returnable in eight days of *Saint Martin*, in that ſame term, wheresoever, &c. was held here at *Weſtminſter* from the day of *St. Michael* in the ſaid three weeks at the requeſt of the ſaid *W.* At which day at *Weſtminſter* aforeſaid came as well the ſaid *M.* by *J. M.* his attorney, as the ſaid *W.* by *J. A.* his attorney; *And* the ſaid *M.* by his ſaid

Plaint in county court.

Removed into B. R. by recordari.

Declaration.

ſaid attorney complains, that the ſaid *W.* on the ninth day of *April* in the twelfth year of the reign of our ſovereign lady *Anne*, now queen of *Great Britain*, *&c.* at *Chalvrington* in the county aforeſaid, in a certain place there called the *Croft*, took the cattle, to wit, eight ewes and ſix lambs of the ſaid *M.* and them unjuſtly detained againſt gages and pledges, *&c.* until, *&c.* Wherefore the ſaid *M.* ſays that he is injured, and hath damage to the value of ten pounds; And thereupon he brings ſuit, *&c.* *And* the ſaid *W.* by his ſaid attorney defends the force and injury, when, *&c.* and prays leave to imparle thereupon before our lady the queen until on the octave of *St. Hilary*, whereſoever, *&c.* and has, *&c.* The ſame day is given as well to the ſaid *M.* as to the ſaid *W.* *&c.* *At which day* before our lady the queen at *Weſtminſter* came as well the ſaid *M.* as the ſaid *W.* by their attornies aforeſaid; And upon this the ſaid *W.* prays further leave to imparle thereupon before our ſaid lady the queen, until from the day of *Eaſter* in fifteen days, whereſoever, *&c.* and has, *&c.* The ſame day is given as well to the ſaid *M.* as to the ſaid *W.* *&c.* At which day before our ſaid lady the queen at *Weſtminſter* came as well the ſaid *M.* as the ſaid *W.* by their attornies aforeſaid: *And* upon this the ſaid *W.* by his ſaid attorney ſays, that he took the ſaid cattle at *Ripe*, otherwiſe *Ecklington*, in the county aforeſaid; *without this*, that he took the ſaid cattle at *Chalvrington* in the county aforeſaid, as the ſaid *M. G.* by his ſaid declaration has above alledged;

Imparlance.

Imparlance continued.

Defendant ſays that he took the cattle in another place.

Traverſe.

And this he is ready to verify: Wherefore he prays judgment of the ſaid writ, and that the ſaid writ and declaration may be quaſhed, &c.* *And* for having a return of the ſaid cattle the ſaid *W.* as bailiff of *R. R.* well acknowledges the taking of the ſaid cattle at *Ripe*, otherwiſe *Ecklington*, in the county aforeſaid, in a certain place called the *Cony Earths*; and juſtly, &c. becauſe he ſays that the ſaid place called the *Cony Earths* contains, and at the time in which, &c. contained five acres with the appurtenances in the ſaid pariſh of *Ripe*, otherwiſe *Ecklington*; of which ſaid five acres of land, with the appurtenances, the ſaid *R.* before the ſaid time in which, &c. was ſeiſed in his demeſne as of fee; and being ſo thereof ſeiſed before the ſaid time in which, &c. to wit, on the eighteenth day of *March* in the eleventh year of the reign of our ſovereign lady *Anne* now queen of *Great Britain*, &c. at the pariſh of *Selmiſton* in the county

Suggeſtion pro retorn' habend. as bailiff of B. R. makes cognizance for rent arrear.

B. R. ſeiſed in fee.

Leaſes to M. G.

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* Replevin of cattle taken in *B.* Plea in abatement, took them in *C. abſque hoc, quod cepit in præd. loco vocat'* B. &c. *et pro returno habendo* he avows, &c. The plaintiff confeſſes the caption to be in *C.* and thereupon the avowant had judgment that the writ ſhould abate, and for the return of the cattle. *Curia*: The avowant ſhall not have coſts, for the *ſtat.* 21 *H* 8. *c.* 19. does not extend to this caſe, but gives coſts only when the plaintiff is nonſuited; and the *ſtat.* 7 *H.* 8. *c.* 4. gives coſts only when the plaintiff is barred; but here the plaintiff is neither barred nor nonſuited, the writ only abates, he may have a new writ, and is not put to his ſecond deliverance. *Trin.* 1 *Annæ*, *B. R. Smith* and *Walgrave*. *Com. Rep.* 122.

afore-

aforeſaid, the ſaid *R. R.* demiſed to one *M. G.* the younger, the ſaid five acres with the appurtenances, by the name of all thoſe two pieces or parcels of paſture called the *Cony Earths*, with the appurtenances lying and being in *Ripe*, otherwiſe *Ecklington* aforeſaid; To have and occupy the ſaid five acres of land with the appurtenances, whereof, *&c.* to the ſaid *M. G.* the younger, from the feaſt of the annunciation of the Bleſſed Virgin *Mary* then next enſuing, unto the end and term of one whole year, and ſo from year to year as long as it ſhould pleaſe both parties: Yielding and paying therefore the yearly rent or ſum of fifty ſhillings of lawful money of *Great Britain*, to be paid at the two moſt uſual feaſts or times of payment in the year, to wit, at the feaſt of *St. Michael* the archangel, and the annunciation of the Bleſſed Virgin *Mary*, by even and equal portions; by virtue of which ſaid demiſe the ſaid *M. G.* the younger, afterwards, and before the ſaid time in which, *&c.* to wit, on the twenty-ſixth day of *March* in the year laſt aboveſaid, entered into the ſaid five acres of land with the appurtenances, whereof, *&c.* and was poſſeſſed thereof: And the ſaid *M. G.* the younger being ſo poſſeſſed thereof, and the ſaid *R.* being ſeiſed of the reverſion of the ſaid five acres of land, with the appurtenances, in his demeſne as of fee; and becauſe fifty ſhillings of the ſaid rent for one year ended at the feaſt of the annunciation of the Bleſſed Virgin *Mary* in the twelfth year of the reign of our lady the queen

Leſſee enters.

Rent arrear.

of *Great Britain*, &c. were in arrear and unpaid to the ſaid *R.* after the feaſt, and at the ſaid time in which, &c. the ſaid *W.* as bailiff of the ſaid *R.* well acknowledges the taking of the ſaid cattle in the ſaid place in which, &c. as in parcel of the ſaid tenements, with the appurtenances, whereof, &c. demiſed to the ſaid *M. G.* the younger in form aforeſaid, and juſtly, &c. for the ſaid fifty ſhillings of rent being in arrear to the ſaid *R.* in form aforeſaid, &c. And this he is ready to verify: Wherefore he prays judgment, and a return of the ſaid cattle, together with his damages, coſts and charges in this behalf expended, according to the form of the ſtatute in ſuch caſe made and provided, to be adjudged to him, &c.

Day given for the plaintiff to plead in bar.

And upon this the ſaid *M.* prays leave of the court of our ſaid lady the preſent queen here until from the day of *St. Michael* in three weeks, whereſoever, &c. to plead in bar of the ſaid cognizance, and has, &c. The ſame day is given as well to the ſaid *M.* as to the ſaid *W.* &c. *Before which day* our ſaid lady the queen died, and our ſovereign lord *George* the preſent king ſucceeded, and took upon himſelf the government of this kingdom; *At which* ſaid return in 8 days of *Saint Martin*, before our ſaid lord the king at *Weſtminſter* came as well the ſaid *M.* as the ſaid *W.* by their attornies aforeſaid; And the ſaid *M.* prays further leave of the court of our ſaid lord the preſent king here until on the

Death of the queen.

Further day given.

the octave of *St. Hilary*, whereſoever, &c. to plead in bar of the ſaid cognizance, and has, &c. The ſame day is given as well to the ſaid *M.* as to the ſaid *W.* &c. *At which* ſaid return on the octave of *St. Hilary* before our ſaid lord the king at *Weſtminſter* came as well the ſaid *M.* as the ſaid *W.* by their attornies aforeſaid; And the ſaid *M.* prays further leave of the court of our ſaid lord the preſent king here until from the day of *Eaſter* in fifteen days, whereſoever, &c. to plead in bar of the ſaid cognizance, and has, &c. The ſame day is given as well to the ſaid *M.* as to the ſaid *W.* &c. *At which* ſaid return from the day of *Eaſter* in fifteen days before our ſaid lord the king at *Weſtminſter* came as well the ſaid *M.* as the ſaid *W.* by their attornies aforeſaid; And the ſaid *M.* prays further leave of the court of our ſaid lord the preſent king here until on the morrow of the *Holy Trinity*, whereſoever, &c. to plead in bar of the ſaid cognizance, and has, &c. The ſame day is given as well to the ſaid *M.* as the ſaid *W.* &c. *Upon which* the ſaid *M.* being ſolemnly demanded, came not, nor did he further proſecute his ſaid writ; *Therefore* it is conſidered, that the ſaid *M.* take nothing by his ſaid writ, but be in mercy for his falſe complaint thereupon, and that the ſaid *W.* go thereupon without day, &c. *And thereupon* the ſaid *W.* according to the form of the ſtatute in ſuch caſe lately made and provided, prays the writ of our ſaid lord the preſent king to be directed to the ſheriff of the the

Further day given.

Further day given.

Plaintiff makes default. Judgment.

Defendant prays a writ of inquiry.

county aforeſaid, to inquire of the arrears of the ſaid rent, and of the value of the goods and chattels above ſpecified; and it is granted to him, *&c.* *Therefore* it is commanded to the ſheriff of the county aforeſaid, that according to the form of the ſaid ſtatute, by the oath of twelve good and lawful men of his county, he diligently inquire how much of the ſaid yearly rent was in arrear and unpaid, at the ſaid time of the taking and diſtraining the ſaid goods and chattels, and how much the ſaid goods and chattels ſo as aforeſaid taken and diſtrained were worth, according to the value of them; and that the ſheriff ſhould make appear here the inquiſition which, *&c.* from the day of *St. Michael* in three weeks, whereſoever, *&c.* under his ſeal, and the ſeals, *&c.* *At which day* here came the ſaid *W.* by his attorney aforeſaid, and the ſheriff, to wit, Sir *J. S.* bart. now returns here a certain inquiſition taken before him at *Eaſtgrinſtead* in the county aforeſaid on the fifth day of *Auguſt* laſt paſt, by the oath of twelve good and lawful men, by which it is found, that at the time of taking the ſaid goods and chattels, fifty ſhillings of the ſaid yearly rent in the ſaid avowry mentioned were due to the ſaid *W.* in arrear, and were unpaid; and that the ſaid goods and chattels, ſo as aforeſaid taken and diſtrained, according to the true value thereof were worth fifty ſhillings. *Therefore* it is conſidered, that the ſaid *W.* recover againſt the ſaid *M.* the ſaid fifty ſhillings of the rent afore-

Inquiry awarded.

Return of inquiry.

Judgment thereon.

aforeſaid, being found by the ſaid inquiſition in form aforeſaid, and his damages by occaſion of the premiſſes to nine pounds, by the court of our lord the preſent king here adjudged to the ſaid *W.* at his requeſt, for his coſts and charges by him in this behalf ſuſtained, according to the form of the ſtatute thereupon lately made and provided: Which ſaid value, coſts and charges, in the whole amount to fourteen pounds, *&c.*

And the ſaid *W.* by *H. S.* his attorney comes and defends the force and injury, when, *&c.* and as bailiff of *M. G.* well acknowledges the taking the ſaid cattle in the ſaid place in which, *&c.* and juſtly, *&c.* becauſe he ſays that the ſame place, in which the taking the ſaid cattle is ſuppoſed to be done, contains, and at the ſame time, in which the taking the ſaid cattle is ſuppoſed to be done, contained in itſelf forty acres of land with the appurtenances in *L.* aforeſaid; and that long before the ſaid time in which, *&c.* the ſaid *F.* was ſeiſed of the ſaid forty acres of land with the appurtenances, whereof the ſaid place in which *&c.* is parcel, in his demeſne as of fee, and held the ſaid forty acres of land with the appurtenances of the ſaid *M.* as of his manor of *B.* in the county of *S.* aforeſaid, by fealty, ſuit of court, rent of twelve ſhillings and ſixpence every year, to be paid yearly at the feaſt of *St. Michael*; of which ſervices the ſaid *M.* was ſeiſed by the hands of the ſaid *F.* as by the hands of his true tenant, to wit, of the fealty, ſuit of court, and of the ſaid rent, in his

Conuſance as bailiff. Lill. Ent. 360.

For rent service.

his demeſne as of fee; *And* becauſe five pounds twelve ſhillings and ſix-pence of the aforeſaid rent for nine years, ended at the feaſt of *St. Michael* in the twenty-ſixth year of the reign of our ſaid lord the preſent king, were in arrear and unpaid to th ſaid *M.* at the ſaid time in which, *&c.* the ſaid *W.* as bailiff of he ſaid *M.* well acknowledges the taking the ſaid cattle in the ſaid place in wh ch, *&c.* and juſtly, *&c.* for the ſaid five poun s twelve ſhillings and ſixpence, ſo being in arrear in form aforeſaid, as in parcel of the ſaid land held of the ſaid *M.* in form aforeſaid, and within the fee, *&c.* And this he is ready to verify; Wherefore he prays judgment, and a return of the ſaid cattle to be adjudged to him, *&c.*

Bar, not ſeiſed of the rent.

And the ſaid *F.* ſays that the ſaid *M.* was not ſeiſed of the ſaid ſervices by the hands of the ſaid *F.* as by the hands of his true tenant, as the ſaid *W.* has above alledged; And this he is ready to verify; Wherefore for this that the ſaid *W.* above acknowledges the taking the ſaid cattle in the ſaid place in which, *&c.* the ſaid *F.* prays judgment and his damages, by occaſion of the taking and unjuſtly detaining the ſaid cattle, to be adjudged to him, *&c.*

Replication.

And the ſaid *W.* as before ſays, that the ſaid *M.* was ſeiſed of the ſaid ſervices by the hands of the ſaid *F.* as by the hands of his true tenant, as he the ſaid *W.* has above alledged; and of this he puts himſelf upon the

Iſſue.

country; *And* the ſaid *F.* does ſo likewiſe:

I

It is therefore commanded to the ſheriff, that he cauſe to come here, from the day of the *Holy Trinity* in three weeks, twelve, *&c.* by whom, *&c.* and who neither, *&c.* to take cognizance, *&c.* becauſe as well, *&c.* Venire awarded.

Scire facias.

GEORGE the ſecond, *&c.* To the ſheriffs of *London* greeting: *Whereas A. H.* widow, who was the wife of Sir *R. H.* knt. deceaſed, lately in our court before Sir *R. E.* knt. and his brethren, then our juſtices of the *Common Bench* at *Weſtminſter*, by our writ of dower, whereof ſhe hath nothing, *&c.* and by the judgment of the ſame court recovered againſt *M. P.* eſq; as well her ſeiſin of a third part of 24 meſſuages, with the appurtenances, in the pariſh of *St. Dunſtan in the Weſt*, *London*, as alſo 754 *l.* 6 *s.* 7 *d.* as well for the value of the third part of the tenements aforeſaid, with the appurtenances, from the time of the death of the ſaid Sir *R.* her late huſband, *&c.* and whereof the ſaid Sir *R.* died ſeiſed, as for her damages, coſts and charges, which ſhe ſuſtained by reaſon of the detaining the ſaid dower, whereof the ſaid *M.* is convicted, as by the inſpection of the record and proceſs thereof, Sci. fac. quare executionem non after error brought in dower. B. R.

thereof, which by virtue of our writ for correcting errors profecuted by the ſaid *M.* of and upon the premiſſes, we lately cauſed to be brought into our court before us, it appeareth to us of record; and now on the behalf of the ſaid *A.* we have received information in our court before us, that although judgment be thereof given, yet execution of the ſaid judgment doth ſtill remain to be done unto her; whereupon the ſaid *A.* hath beſought us, that a proper remedy may be provided for her in this behalf: *We therefore*, being willing that what is juſt ſhould be done in this behalf, do command you that by honeſt and lawful men of your bailiwic ye warn the ſaid *M.* that he appear before us on the octave of the purification of the Bleſſed Virgin *Mary*, whereſoever we ſhall then be in *England*, to ſhew if he hath or knoweth of any thing to ſay for himſelf, wherefore the ſaid *A.* ſhould not have her execution againſt him, as well for the ſeiſin of the ſaid third part of the tenements aforeſaid, with the appurtenances, as the value, damages, coſts and charges aforeſaid, according to the force, form and effect of the recovery aforeſaid, if it ſhall ſeem expedient to him, and further to do and receive what our ſaid court before us ſhall then conſider of him in this behalf: And have ye there then the names of thoſe by whom ye ſhall have warned him, and this writ. Witneſs *Philip* lord *Hardwicke* at *Weſtminſter* the 23d day of *January* in the 9th year of our reign.

Ventris.

GEORGE

GEORGE the third, *&c.* To the ſheriff of *Surry* greeting: *Whereas J. Y.* lately in the court of our palace of *Weſtminſter*, before the judges of that court without our writ, by the judgment of the ſame court, recovered againſt *T. W.* 6 *l.* 19 *s.* 10 *d.* for his damages which he ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings made by the ſaid *T.* to the ſaid *S.* at *Southwark* in your county, and within the juriſdiction of the ſame court, as for his coſts and charges expended by him about his ſuit in that behalf, whereof the ſaid *T.* is convicted, as by the inſpection of the record and proceſs thereof in our court before us at *Weſtminſter* now remaining, and which for certain cauſes we lately cauſed to be brought into our ſame court before us, appeareth to us of record; and now on the behalf of the ſaid *J.* in our court before us we have been informed that although judgment be thereof given, yet execution of the ſaid damages ſtill remaineth to be made to the ſaid *J.* Whereupon the ſaid *J.* hath beſought us that a proper remedy may be provided for him in this behalf; *And* we, being willing that what is juſt ſhould be done in this behalf, do command you, that by good and lawful men of your bailiwic you make known to the ſaid *T.* that he be before us on the octave of *St. Hilary*, whereſoever we ſhall then be in *England*, to ſhew if any thing he hath or knoweth to ſay for himſelf why the ſaid *J.* ought not to have his execution

Sci. fac. quare executi. non after error on a judgment in the palace court. B. R.

tion againſt him of the damages aforeſaid, according to the force, form and effect of the ſaid recovery, if it ſhall ſeem expedient to him, and further to do and receive what our ſame court before us ſhall conſider of him in this behalf: And have you there the names of thoſe by whom you ſhall make known to him, and this writ. Witneſs, *&c.*

Mich. 16 *Geo.* 3.

Entry of ſci. fi. inq. againſt executors. B. R. Recital of fi. fa. againſt the executors on a judgment in caſe recovered againſt the teſtator.

THE lord the king ſent to the ſheriffs of *London* his writ cloſe, in theſe words, to wit, *George* III. *&c.* To the ſheriffs of *London* greeting. *Whereas* by our writ we lately commanded you, that of the goods and chattels which were of *T. H.* deceaſed, at the time of his death, being in the hands and cuſtody of *A. H.* and *B. B.* executors of the teſtament and laſt will of the ſaid *T. H.* to be adminiſtered in your bailiwic, you ſhould cauſe to be made 511 *l.* 10 *s.* which *T. M.* lately in our court before us at *Weſtminſter*, by bill without our writ and by the judgment of the ſame court recovered againſt the ſaid *T. H.* in his life-time, for his damages which he ſuſtained as well by occaſion of the not performing certain promiſes and undertakings made to the ſaid *T. M.* by the ſaid *T. H.* in his life-time, as for his coſts and charges expended by him about his ſuit in that behalf; whereof the ſaid *T. H.* was convicted, as appeareth to us of record. *And* whereupon lately in our ſame court before us,

After ſci. fa. againſt the executors.

us, it was conſidered, that the ſaid *T. M.* ſhould have his execution againſt the ſaid *A.* and *B.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* to be adminiſtered, as alſo appeared to us of record; and that you ſhould have that money before us at *Weſtminſter* on *Monday* next after the morrow of *All Souls* to render to the ſaid *T. M.* for his damages aforeſaid. *And* by that writ we alſo commanded you, that of the goods and chattels which were of the ſaid *T. H.* being in the hands of the ſaid *A.* and *B.* in your bailiwic to be adminiſtered, you ſhould cauſe to be made 16*l.* which were adjudged to the ſaid *T. M.* in our ſaid court before us at *Weſtminſter*, according to the form of the ſtatute in ſuch caſe thereupon lately made and provided, for his coſts and charges expended by him about his ſuit, in the proſecution of our writ of *ſcire facias* of and upon the ſaid judgment againſt the ſaid *A.* and *B.* in our court before us at *Weſtminſter* aforeſaid lately proſecuted, whereof the ſaid *A.* and *B.* were convicted, as alſo appeareth to us of record, of the goods and chattels which were of the ſaid *T. A.* at the time of his death, being in the hands of the ſaid *A.* and *B.* to be adminiſtered if they had ſo much in their hands to be adminiſtered; and if they had not ſo much in their hands to be adminiſtered, then the ſaid 16*l.* to be levied of the proper goods and chattels of the ſaid *A.* and *B.* And that you ſhould have

And for coſts on the ſci. fa. de bonis teſtatoris.

Si tantum, &c.

Si non, &c. de bonis propriis.

have that money before us at *Weſtminſter* at the day aforeſaid, to render to the ſaid *T. M.* for thoſe coſts and charges. *And* you at that day returned to us that the ſaid *A. H.* and *B. H.* had not any goods or chattels, and that neither of them had any goods or chattels in your bailiwic which were of the ſaid *T. H.* deceaſed, at the time of his death in their hands to be adminiſtered, whereof you could cauſe to be made the damages, coſts and charges aforeſaid, or any part thereof. And that the ſaid *A.* and *B.* or either of them, had not any goods or chattels in your bailiwic whereof you could cauſe to be made the ſaid 16*l.* for coſts and charges aforeſaid or any part thereof. *And* becauſe the ſaid return by you ſo made as aforeſaid in our court before us at *Weſtminſter* aforeſaid, ſeemeth to be in delay of the execution of the ſaid damages, coſts and charges ſo as aforeſaid recovered and adjudged; *And alſo* for that that in our ſame court before us at *Weſtminſter* aforeſaid, on the behalf of the ſaid *T. M.* it is ſufficiently teſtified, that divers goods and chattels which were of the ſaid *T. H.* at the time of his death, to the value of the ſaid damages, coſts and charges, came to the hands and poſſeſſion of the ſaid *A.* and *B.* after the death of the ſaid *T. H.* to be adminiſtered, and that the ſaid *A.* and *B.* have ſold, waſted and eloined the ſaid goods and chattels, and have converted and diſpoſed of the money coming therefrom to their own proper uſe, to the intent that the ſaid execution thereof ſhould not yet be made;

Return.

Devaſtavit ſuggeſted.

And

And we being unwilling that thoſe things, which in our ſame court before us have been rightly acted and adjudged, ſhould be avoided by art or deceit, command you that of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* to be adminiſtered in your bailiwic, you cauſe to be made the damages, coſts and charges aforeſaid, if thereof you can levy the ſame; and have the money thereof levied before us at *Weſtminſter*, on *Tueſday* next after the morrow of *All Souls*, to render the ſaid *T. M.* for the damages, coſts and charges aforeſaid. Fi. fac. de bonis teſtatoris.

And if you cannot levy the ſame, then if it can appear to you by inquiſition, in this behalf, to be taken upon the oath of good and lawful men of your bailiwic, or by any means whereby you may be better informed that the ſaid *A.* and *B.* have ſold, waſted, eloined or converted to their own proper uſe, goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* to be adminiſtered, to the value of the damages, coſts and charges aforeſaid, or of any part of them; If the ſheriff cannot levy, then if it ſhall appear by inquiſition that the executors have waſted, &c.

Then by good and lawful men of your bailiwic make known to the ſaid *A.* and *B.* that they be before us at *Weſtminſter* on the ſaid *Tueſday* next after the morrow of *All Souls*, to ſhew if any thing they have or know to ſay for themſelves, why the ſaid *T. M.* ought not to have his execution againſt them of the damages, coſts and charges aforeſaid, to be levied of the proper goods and chattels of Sci. fac. quare execution' non, &c. de bonis propriis.

the ſaid *A.* and *B.* if it ſhall ſeem expedient to him, and further to do and receive what our court before us ſhall then and there conſider of them in this behalf; and have then as well the names of thoſe by whoſe oath you ſhall take that inquiſition in this behalf, as the names of them by whom you ſhall make known to the ſaid *A.* and *B.* and this writ. Witneſs *William* lord *Mansfield* at *Weſtminſter*, the 6th day of *November* in the 16th year of our reign.

Return. *At which day* before our lord the king at *Weſtminſter* came the ſaid *T. M.* in his proper perſon, and the ſheriffs of *London*, namely Sir *H. H.* knt. and *R. A.* eſq; at that day returned the ſaid writ in form aforeſaid directed to them, in manner and form following, that is to ſay, *That* the ſaid *A.* and *B.* had not, nor had either of them any goods or chattels which were of the ſaid *T. H.* deceaſed, at the time of his death in their hands to be adminiſtered, in their bailiwic, whereof the damages, coſts and charges aforeſaid, or any part thereof, might be cauſed to be made; *And* that the ſaid *A.* and *B.* had not, nor had either of them any thing in their bailiwic by which they could make known to them or either of them; and that they were not found, nor was either of them found in the ſame. *But* that the ſaid *A. H.* and *B. H.* had diverſe goods and chattels which were of the ſaid *T. H.* deceaſed, at the time of his death in their hands and cuſtody, which after the death of the ſaid *T. H.* came to the hands and poſſeſſion of the ſaid

Nulla bona.

Nihil quoad ſci. fac.

Devaſtavit per inquiſit'.

A.

A. and *B.* to be adminiſtered, to the value of the damages, coſts and charges aforeſaid, which ſaid goods and chattels they the ſaid *A.* and *B.* have eloined, waſted and converted to their own proper uſe, as appeareth to the ſaid ſheriffs by a certain inquiſition taken in that behalf, on the oath of good and lawful men of their bailiwic, and annexed to the ſaid writ.

And the ſaid *A. H.* and *B. H.* at the ſame day being ſolemnly called, come in their proper perſons and defend the force and injury, when, *&c.* and they ſay that the ſaid *T. M.* ought not to have his execution againſt them of the damages aforeſaid, of their proper goods and chattels, becauſe they ſay that they the ſaid *A.* and *B.* on the day of the ſuing forth the ſaid writ of *ſcire facias*, had fully adminiſtered all the goods and chattels which were of the ſaid *T. H.* at the time of his death, which had come to the hands of the ſaid *A.* and *B.* to be adminiſtered, to wit, at *London* aforeſaid, in the pariſh of *St. Mary le Bow*, in the ward of *Cheap*; and that they have not, nor had on the day of ſuing forth the ſaid writ of *ſcire facias*, any goods or chattels which were of the ſaid *T. H.* at the time of his death, in their hands to be adminiſtered; *Without this*, that the ſaid *A.* and *B.* have waſted, ſold, eloined or converted, or diſpoſed to their own proper uſe, any goods or chattels which were of the ſaid *T. H.* at the time of his death, in manner and form as above is ſuppoſed by the ſaid return of the ſaid writ

Plea, plene adminiſtraver'.

Devaſtavit traverſed.

of *ſcire facias* and the inquiſition aforeſaid thereupon taken; and this they are ready to verify. Wherefore they pray judgment if the ſaid *T. M.* ought to have execution againſt them of the ſaid damages, coſts and charges of the proper goods and chattels of the ſaid *A.* and *B.* *&c.*

Replication, iſſue on the traverſe.

And the ſaid *T. M.* ſaith, that he by any thing by the ſaid *A.* and *B.* above in pleading alledged ought not to be precluded or retarded from having his execution againſt the ſaid *A.* and *B.* of the damages, coſts and charges aforeſaid, of the proper goods and chattels of the ſaid *A.* and *B.* becauſe he ſaith, that the ſaid *A.* and *B.* have eloined, waſted and converted to their own proper uſe, diverſe goods and chattels which were of the ſaid *T. H.* at the time of his death, and which after the death of the ſaid *T. H.* came to the hands and poſſeſſion of the ſaid *A.* and *B.* to be adminiſtered, to wit, to the value of the damages, coſts and charges aforeſaid, in manner and form as above is found by the ſaid inquiſition, to wit, at *London* aforeſaid, in the pariſh and ward aforeſaid; and this he prayeth may be inquired of by the country: *And* the ſaid *A.* and *B.* do ſo likewiſe: *Therefore* it is commanded to the ſheriffs that they cauſe to come before the lord the king at *Weſtminſter*, on next after twelve, *&c.* by whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid, at the ſame place, *&c.*

Venirefacias.

Mich

Mich. 16 *Geo.* 3. *Verdict for the plaintiff.*

Error in parliament, and bail put in the judgment, being *de bonis propriis.*

Eaſter 15 *Geo.* 3.

London, to wit, The lord the king ſent his writ cloſe to the ſheriffs of *L.* directed in theſe words, to wit, *George* the third, *&c.* To the ſheriffs of *L.* greeting. *Whereas T. M.* lately in our court before us at *W.* by bill and without our writ, and by the judgment of the ſame court recovered againſt *T. H.* 511*l.* 10*s.* for his damage which he ſuſtained as well by occaſion of the not performing certain promiſes and undertakings lately made by the ſaid *T. H.* to the ſaid *T. M.* as for his coſts and charges expended by him about his ſuit in that behalf, whereof the ſaid *T. H.* is convicted, as appeareth to us of record. *And* afterwards the ſaid *T. H.* at *L.* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, made his teſtament and laſt will in writing, and by the ſame teſtament conſtituted *A. H.* and *B. H.* executors thereof, and afterwards died there; after whoſe death the ſaid *A. H.* and *B. H.* took upon themſelves the burthen of the execution of the ſaid teſtament. *And* now on the behalf of the ſaid *T. M.* in our court before us we have been informed, that although judgment be thereof given,

Sci. fa. againſt executors on a judgment againſt teſtator. B. R. Recital of judgment.

Teſtator made his will and defendants executors thereof.

Dies and defendants take the executorſhip upon them.

yet execution of the damages aforeſaid ſtill remaineth to be made to him; whereupon the ſaid *T. M.* prayeth that a proper remedy may be provided for him in this behalf.

Scire facias. *And we*, being willing that what is juſt ſhould be done in this behalf, command you that by good and lawful men of your bailiwic you make known to the ſaid *A. H.* and *B. H.* that they be before us at *W.* on *Wedneſday* next after 15 days of *Eaſter*, to ſhew if they have or know any thing to ſay for themſelves, why the ſaid *T. M.* ought not to have his execution againſt the ſaid *A. H.* and *B. H.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A. H.* and *B. H.* to be adminiſtered, according to the force, form and effect of the ſaid recovery, if it ſhall ſeem expedient to them; and further to do and receive all and ſingular thoſe things which our ſaid court before us ſhall then and there conſider of them in this behalf; and have there then the names of them by whom you ſhall make known to them, and this writ. Witneſs *William* lord *Mansfield* at *W.* the 12th day of *February* in the 15th year of our reign.

Return nihil. *At which day* before the ſaid lord the king at *W.* came the ſaid *T. M.* in his proper perſon, and the ſheriffs of *L.* namely, *S. R.* and *T. P.* eſqrs. at that day return, that the ſaid *A. H.* and *B. H.* have nothing, nor hath either of them any thing in their bailiwic, whereby they can make known to them or

to

to either of them, nor are they found, nor is either of them found in the ſame. And the ſaid *A. H.* and *B. H.* come not. *Therefore*, as before, it is commanded to the ſheriffs of *L.* that by good, &c. they make known to the ſaid *A. H.* and *B. H.* that they be before the ſaid lord the king at *W.* on *Thurſday* next after three weeks of *Eaſter*, to ſhew in form aforeſaid, if, &c. And further, &c. The ſame day is given to the ſaid *T. M.* at the ſame place, &c.

Alias awarded.

At which day before the ſaid lord the king at *W.* came the ſaid *T. M.* in his proper perſon; and the ſaid ſheriffs of *L.* aforeſaid, as before, return, that the ſaid *A. H.* and *B. H.* have nothing, nor hath either of them, any thing in their bailiwic, whereby they can make known to them or to either of them, nor are they found, nor is either of them found in the ſame. *And* the ſaid *A. H.* and *B. H.* at the ſame day being ſolemnly called, alſo come, by *N. T.* their attorney, and ſay, *That* the ſaid *T. M.* ought not to have execution againſt the ſaid *A. H.* and *B. H.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* (as is above ſuppoſed by the ſaid writ) to be adminiſtered, becauſe they ſay, that after the giving the ſaid judgment, and before the iſſuing out of the ſaid firſt writ of *ſcire facias*, and in the life-time of the ſaid *T. H.* to wit, on the 18th day of *June* in the 5th year of the reign of the ſaid lord the preſent king, the ſaid *T. M.* for

Return nihil.

Defendants appear.

Plea, a ca. ſa. againſt teſtator, who being taken in execution paid the damages recovered.

obtaining his ſaid damages, proſecuted out of the court here of and upon the ſaid judgment a certain writ of the ſaid lord the king of *capias ad ſatisfaciendum* againſt the ſaid *T. H.* directed to the then ſheriffs of *L.* aforeſaid, by which ſaid writ it was commanded to the ſaid then ſheriffs, that they ſhould take the ſaid *T. H.* if he ſhould be found in their bailiwic, and ſafely keep him, ſo that they might have his body before the ſaid lord the king at *W.* on *Wedneſday* next after three weeks of the *Holy Trinity*, to ſatisfy the ſaid *T. M.* of the damages aforeſaid, whereof he was convicted; and that they ſhould have then here the ſaid writ; which ſaid writ of *capias ad ſatisfaciendum* the ſaid *T. M.* afterwards, and in the life-time of the ſaid *T. H.* to wit, on the 20th day of *June* in the 5th year aforeſaid, at *L.* aforeſaid, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, delivered to *J. F.* eſq; and Sir *J. S.* knight, then being ſheriffs of *L.* aforeſaid, to be executed in due form of law; by virtue of which ſaid writ of *capias ad ſatisfaciendum* the ſaid *J. F.* eſq; and Sir *J. S.* knight, then as aforeſaid being ſheriffs of *L.* aforeſaid, afterwards and before the return of the ſaid writ, and in the life-time of the ſaid *T. H.* to wit, on the 1ſt day of *July* in the 5th year aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, took and arreſted the ſaid *T. H.* and then and there had and detained the ſaid *T.* in their cuſtody in execution for the damages aforeſaid, until the ſaid *T. H.* afterwards in his life-time, to wit,

wit, on the 2d day of *July* in the 5th year aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, paid and ſatisfied the ſaid damages to the ſaid *T. M.* And this the ſaid *A.* and *B.* are ready to verify: Wherefore they pray judgment if the ſaid *T. M.* ought to have execution againſt the ſaid *A.* and *B.* of the damages aforeſaid, of the goods and chattels which were of the ſaid *T. H.* at the time of his death, being in the hands of the ſaid *A.* and *B.* (as above is ſuppoſed by the ſaid writ) to be adminiſtered, *&c.*

Replication, that the teſtator was not taken in execution, &c.

And the ſaid *T. M.* ſaith that he by any thing before alledged ought not to be precluded from having his execution of the damages aforeſaid, in form aforeſaid, becauſe *in proteſting* that he the ſaid *T. M.* did not proſecute any ſuch writ of *capias ad ſatisfaciendum*, as they the ſaid *A.* and *B.* above in pleading have alledged, *and alſo in proteſting* that the ſaid *T. H.* in his life-time did not pay or ſatisfy the damages aforeſaid, or any part thereof, to the ſaid *T. M.* *For plea* the ſaid *T. M.* ſaith, that the ſaid *T. H.* in his life-time was not taken in execution for the damages aforeſaid in manner and form as the ſaid *A.* and *B.* above in pleading have alledged; and he prayeth that this may be inquired of by the country; *And* the ſaid *A.* and *B.* do ſo likewiſe, *&c.* *Therefore* let a jury come thereupon before the lord the king at *Weſtminſter* on —— next after ——; and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* the ſame day is given to the parties aforeſaid at the ſame place, *&c.*

Iſſue.

Venire facias.

GEORGE

Sci. fac. quare execut. non, &c. on a judgment in an inferior court removed by writ of error. B. R.

GEORGE, &c. To the ſheriff of *Devonſhire*, greeting: *Whereas W. B.* in our court before the mayor of the borough of *Totneſs* in your county, by the judgment of the ſame court recovered againſt *W. G.* 5 *l.* 3 *s.* 4 *d.* which in our ſaid court were adjudged to the ſaid *W. B.* for his damages which he ſuſtained, as well by occaſion of the not performing certain promiſes and undertakings made by the ſaid *W. B.* to the ſaid *W. G.* and not performed, as for his coſts and charges expended by him about his ſuit in that behalf, whereof the ſaid *W. G.* is convicted, as by the inſpection of the record and proceſs thereupon, which for the cauſe of error intervening we lately cauſed to come in our court before us, and in our ſaid court before us is now remaining, more fully appeareth: And now on the behalf of the ſaid *W. B.* we have been lately informed in our court before us, that although judgment be thereupon given, yet execution of the ſaid judgment ſtill remaineth to be made to him; whereupon the ſaid *W. B.* hath prayed us, that a proper remedy may be provided for him in this behalf: *And* we, being willing that what is juſt ſhould be done in this behalf, *Command you*, that by good and lawful men of your bailiwic, you make known to the ſaid *W. G.* that he be before us in 15 days of *St. Martin*, whereſoever we ſhall then be in *England*, to ſhew if any thing he hath or knoweth to ſay for himſelf, why the ſaid *W. B.* ought not to have execution of

of the damages aforeſaid, according to the force, form and effect of the ſaid recovery, if it ſhall ſeem expedient to him, and further to do and receive what our ſaid court before us ſhall then conſider of him in this behalf; and that you have there then the names of them by whom you ſhall make known to him, and this writ. Witneſs, *&c.*

Treſpaſs.

Trinity *term in the ſixteenth year of the reign of king* George *the third.*

Middleſex, to wit. BE *it remembered*, That on *Friday* next after the morrow of the *Holy Trinity*, in this ſame term before our ſovereign lord the king at *Weſtminſter* came *H. G. R.* by *R. R.* his attorney, and brings here in the court of our ſaid lord the king at *Weſtminſter* his certain bill againſt *B. P. J. B.* and *C. P.* in the cuſtody of the marſhal, *&c.* in a plea of treſpaſs upon the caſe, and there are pledges for the proſecution, to wit, *John Doe*, and *Richard Roe*; which ſaid bill follows in theſe words: That is to ſay, *Middleſex*, to wit, *H. G. R.* complains

Memorandum of ſame term.

Declaration for breaking

and entering plaintiff's houſe.

plains of *B. P. J. B.* and *C. P.* being in the cuſtody of the marſhal of the *Marſhalſea* of the ſaid lord the king, before the king himſelf, of that, that is to ſay, that they the ſaid *B. P. J. B.* and *C. P.* on the twenty firſt day of *May* in the tenth year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, *&c.* with force and arms, *&c.* the houſe of the ſaid *H. G. R.* in the pariſh of *St. Leonard Shoreditch* in the county of *Middleſex*, they broke and entered; *And alſo*

For breaking and entering plaintiff's houſe and diſturbing him in the poſſeſſion thereof.

for that they the ſaid *B. P. J. B.* and *C. P.* afterwards, that is to ſay, on the ſame twenty-firſt day of *May* in the tenth year aforeſaid, with force and arms, *&c.* broke and entered another houſe of the ſaid *H. G. R.* in the pariſh aforeſaid in the county aforeſaid, and him the ſaid *H. G. R.* in the quiet uſe and occupation of the ſaid houſe laſt mentioned then and there diſturbed and hindered; *And alſo* for that

For breaking and entering plaintiff's houſe, and carrying away his goods.

they the ſaid *B. P. J. B.* and *C. P.* afterwards, that is to ſay, on the ſame twenty-firſt day of *May* in the tenth year aforeſaid, with force and arms another houſe of the ſaid *H. G. R.* in the pariſh of *St. Leonard Shoreditch* aforeſaid in the county aforeſaid broke and entered and the goods and chattels of him the ſaid *H. G. R.* in the ſaid houſe then being (that is to ſay) a three pint ſilver tankard, a ſilver pint mug, *&c.* [ſetting forth the particulars] of the value of one hundred pounds of lawful money of *Great Britain*, then and there took and carried away, and other enormities to him then and there committed, contrary to the peace of our ſaid lord the now king, and

to

to the damage of the ſaid *H. G. R.* of two hundred and forty pounds: And therefore he bringeth ſuit.

And the ſaid *B. J.* and *C.* by *J. M.* their attorney come and defend the force and injury, when, *&c.* And as to the force and arms, and breaking the houſes of the ſaid *H. G.* and diſturbing and hindering him in the quiet uſe and occupation of the ſaid houſes in the ſaid declaration alledged, and taking and carrying away from thence all or any part of the ſeveral goods and chattels in the ſaid declaration mentioned, except as herein after is ſpecified, and whatſoever is againſt the peace of the ſaid now lord the king, and alſo as to all the ſaid treſpaſſes ſuppoſed to be committed in the houſes aforeſaid, beſides entering into the houſe of the ſaid *H. G.* in the third declaration mentioned, and taking and carrying away the ſeveral goods and chattels, being part of the ſaid goods and chattels in the ſaid declaration mentioned, and herein after ſpecified, they ſay that they or either of them are not guilty, as the ſaid *H. G.* above complains againſt them: And of this they put themſelves upon the country; *And* the ſaid *H. G.* doth likewiſe the ſame. And as to the entering of the ſaid houſe in the ſaid third declaration mentioned, and taking and carrying away the ſeveral goods and chattels, being part of the ſaid goods and chattels in the ſaid declaration ſpecified and herein after mentioned, that is to ſay, two ſtoves, *&c.* they ſay that the ſaid *H. G.* ought not to have or maintain

Not guilty as to part juſtify under plaintiff's wife as to reſidue.

Iſſue.

tain his ſaid action againſt them for the ſame, becauſe they ſay, that before the ſeveral times in which the ſaid ſeveral treſpaſſes were ſuppoſed to be committed, that is to ſay, on the ſaid twenty-firſt day of *May* in the tenth year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, the ſaid *H. G.* gave licence to *E.* his wife to take and carry away the ſaid goods and chattels herein before mentioned, being part of the ſaid goods and chattels in the ſaid declaration ſpecified, from the ſaid houſe, and borrow money thereon for the uſe of the ſaid *H. G.* by pledging of the ſame; and they ſay, that by virtue of ſuch licence ſhe the ſaid *E.* on the day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, before the times the ſaid treſpaſſes were ſuppoſed to be committed, hired the ſaid *B. J.* and *C.* to enter the ſaid houſe, and take and carry away the ſaid ſeveral goods and chattels herein before mentioned, being part as aforeſaid, with intent and purpoſe by pledging of the ſame to borrow money for the uſe of the ſaid *H. G.* and that they afterwards, that is to ſay, on the day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, did by virtue of ſuch licence enter the ſaid houſe of the ſaid *H. G.* and take and carry away the ſaid ſeveral goods and chattels herein before mentioned, being part as aforeſaid, in order to pledge the ſame for the intent and purpoſe aforeſaid, as it was lawful for them to do; and thereupon the ſaid *E.* afterwards, that is to ſay, on the day and year aforeſaid, at the pariſh aforeſaid in the county aforeſaid, to pledge the ſame,

and then and there had and received to and for the uſe of the ſaid *H. G.* her huſband the money for which the ſaid ſeveral goods and chattles herein before mentioned, being part as aforeſaid, were ſo pledged; which are the ſame entering of the ſaid houſe, and taking and carrying away the ſaid ſeveral goods and chattels being part of the ſaid goods and chattels in the ſaid declaration ſpecified and herein before mentioned, and for which the ſaid *H. G.* by his ſaid declaration complains: And this they are ready to verify; and therefore pray judgment whether the ſaid *H. G.* ought to have or maintain his ſaid action againſt them for the ſame.

William Holt.

Replication de injuria ſua propria.

And the ſaid *H. G. R.* as to the aforeſaid plea of the ſaid *B. P. J. P.* and *C. B.* as to the entering into the ſaid houſe of the ſaid *H. G.* in the ſaid third declaration mentioned, and taking and carrying away the ſeveral goods and chattels being part of the ſaid goods and chattels in the ſaid declaration ſpecified, and in the ſaid plea particularly mentioned by them above pleaded in bar, ſaith, That he by any thing in the ſaid plea above alledged ought not to be barred from having and maintaining his ſaid action therefore againſt them, becauſe he ſaith, that the ſaid *B. J.* and *C.* at the time mentioned in the ſaid declaration, at the pariſh aforeſaid with force and arms, of their own wrong, without ſuch cauſe

cauſe as is by them above alledged in their ſaid plea, entered into the ſaid houſe of the ſaid *H. G.* in the ſaid third declaration mentioned, and took and carried away the ſeveral goods and chattels, being part of the ſaid goods and chattels in the ſaid declaration ſpecified, and in the ſaid plea particularly mentioned, in manner and form as the ſaid *H. G. R.* hath above thereof declared againſt them: And this he prays may be inquired of by the country, &c.

Thomas Deniſon.

Iſſue. Venire awarded to try both iſſues.

And the ſaid *B. J.* and *C.* do ſo likewiſe: *Therefore* as well to try this iſſue as the ſaid other iſſues joined between the parties, let the jurors come before our lord the king at *Weſtminſter*, on next after who are in no wiſe related either to the ſaid *H. G.* or to the ſaid *B. J.* and *C.* to make a certain jury of the country between the ſaid parties of the plea aforeſaid, to recognize upon their oaths the full truth of and concerning the premiſſes, becauſe as well the ſaid *B. J.* and *C.* as the ſaid *H. G.* between whom the matter in variance is, have put themſelves upon that jury. The ſame day is given to the parties aforeſaid at the ſame place.

Tueſday

Tueſday *next after three weeks from* Eaſter *day in* Eaſter *term in the ſixteenth year of king* George *the third.*

Roll

Lee.

London, *to wit.* J. G. *B.* complains of *M. M.* in the cuſtody of the marſhal, &c. *For that* he the ſaid *M.* on the twentieth day of *February* in the fourteenth year of the reign of our ſovereign lord *George* the ſecond now king of *Great Britain*, &c. and on divers other days and times between the ſaid twentieth day of *February* and the twentieth day of *April then* next following, with force and arms, &c. on *C.* the wife of the ſaid *J. G.* at *London* aforeſaid, to wit, in the pariſh of *St. Mary* of the arches in the ward of *Cheap*, made an aſſault, and her the ſaid *C.* there debauched and lay with, whereby he the ſaid *J. G.* was deprived of and loſt, during all the time aforeſaid, the help, ſolace, love, affection, comfort and counſel of his ſaid wife, and *other enormities to* the ſaid *J. G.* did, againſt the peace of our ſaid lord the king, to the damage of the ſaid *J. G.* of ten thouſand pounds: And therefore he brings his ſuit, &c.

B. R. Declaration for a criminal converſation with the plaintiff's wife.

S. for the plaintiff.
G. for the defendant.

Pledges for proſecuting { *John Doe*, and *Richard Roe*.

Mich. 14 *Geo.* 3.

Lee.

Memorandum of a bill of the ſame term.

Middleſex, to wit. BE *it remembered*, That on *Monday* next after the morrow of *St. Martin* in this preſent term came before our ſovereign lord the king at *Weſtminſter* Sir *W. M.* bart. by *J. T.* his attorney, and brought here into the court of our ſaid ſovereign lord the king then there his bill againſt *A. F.* eſq; commonly called the lord *A. F.* in the cuſtody of the marſhal, *&c.* of a plea of treſpaſs; and there are pledges to proſecute, to wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words, to wit, *Middleſex*, to wit, Sir *W. M.* bart. complains of *A. F.* eſq; commonly called the lord *A. F.* in the cuſtody of the marſhal, *&c.* *For that* he the ſaid *A.* on the thirtieth day of *March* in the tenth year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, *&c.* and at divers other days

Declaration for raviſhing, debauching, lying with, and carnally knowing the plaintiff's wife.

and times between the ſaid thirtieth day of *March* and the nineteenth day of *June* then next following, with force and arms, *&c.* at the pariſh of *Staines* in the county aforeſaid, did raviſh, debauch, lie with, and carnally know *L.* the wife of the ſaid Sir *W.* whereby the ſaid Sir *W.* was deprived of and loſt the comfort and ſociety of his ſaid wife for all the time aforeſaid, and did other enormities to the ſaid Sir *W.* againſt the peace of our lord the king, to the damage of the ſaid Sir *W.* of twenty thouſand pounds: And therefore he brings his ſuit, *&c.*

And the ſaid *A.* by *H. C.* his attorney comes and defends the force and injury, when, *&c.* and ſaith, that he is in no wiſe guilty of the treſpaſs above charged on him as the ſaid Sir *W.* above complains againſt him: And of this he puts himſelf upon the country; *And* the ſaid Sir *W.* does likewiſe the ſame: *Therefore* let there come a jury thereof before our lord the king at *Weſtminſter*, on next after and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame day is given to the ſaid parties there, *&c.*

Plea, Not guilty.

Iſſue.

Award of the venire.

Mich. 26 *Car.* 2.

Somerſet, *to wit.* G. *B.* eſq. complains of *R. D. W. D.* and *H. D.* being in the cuſtody of the marſhal, *&c.* *For that*, that on the twenty-firſt day of *January* in the year of our Lord 1672, with force and arms, *&c.* they

B. R. Declaration in treſpaſs entering plaintiff's cloſes, eating and conſum-

ing his graſs and corn with cattle, cutting down two oaks, and carrying away the timber.

broke and entered the cloſes of the ſaid *G.* called the *Eaſter twelve acres*, the *Weſter twelve acres*, and *Owels*, at the pariſh of *Canington* in the county aforeſaid, and with their feet in walking trod down and conſumed the graſs of the ſaid *G.* to the value of one hundred ſhillings, lately growing in the ſaid cloſes, and with certain cattle, to wit, horſes, oxen, cows, hogs and ſheep, eat up, trod down, and conſumed other graſs, and the corn of the ſaid *G.* to wit, wheat, barley, peaſe, beans and oats, to the value of forty pounds, alſo lately growing in the ſaid cloſes, and alſo then and there cut down and felled the trees, to wit, two oaks of the ſaid *G.* lately growing in the ſaid cloſes, to the value of five pounds, and alſo then and there took and carried away two cart-loads of timber ariſing therefrom to the value of forty ſhillings, continuing the ſaid treſpaſs as to the eating up, treading down and conſuming the ſaid graſs and corn with feet in walking, and with the ſaid cattle in the ſaid cloſes on divers days and times from the ſaid twenty-firſt day of *January* in the year of our Lord aforeſaid, until the day of exhibiting of this bill, to wit, the twenty-third day of *October* in the twenty-ſixth year of the reign of our ſovereign lord *Charles* the ſecond now king of *England*, *&c.* and did other injuries to him againſt the peace of our ſaid lord the preſent king, to the damage of the ſaid *G.* of fifty pounds: And thereupon he brings ſuit, *&c.*

Continuando.

C.

C. with the plaintiff,
B. with the defendant, } pledges, *&c.*

And the ſaid *R. D. W. D.* and *H. D.* by *F. B.* their attorney, come and defend the force and injury, when, *&c.* And as to the coming with force and arms, or whatſoever is againſt the peace of our ſaid lord the preſent king, ſay that they are not guilty thereof: And of this they put themſelves upon the country: *And* the ſaid *G. B.* does ſo likewiſe: *And as to* the reſidue of the ſaid treſpaſs in the ſaid declaration above ſuppoſed to be done, the ſaid *R. W.* and *H.* ſay, that the ſaid *G.* ought not to have or maintain his ſaid action thereupon againſt them, becauſe they ſay, that the ſaid cloſes, in which the ſaid treſpaſs is above ſuppoſed to be done, are and at the ſame time in which, *&c.* were the ſoil and freehold of one *H. B.* widow, by which the ſaid *R. W.* and *H.* as ſervants of the ſaid *H.* and by her command, at the ſaid time in which, *&c.* broke and entered the ſaid cloſes in which, *&c.* as the proper cloſes, ſoil and freehold of the ſaid *H.* and with their feet in walking trod down and conſumed the ſaid graſs growing in the ſaid cloſes as the proper graſs of the ſaid *H.* and with cattle eat up, trod down, and conſumed the ſaid graſs and corn growing in the ſaid cloſes, as the proper graſs and corn of the ſaid *H.* and then and there cut down and felled the ſaid two oaks growing in the ſaid cloſes as the proper trees

Plea.

Quoad venire vi & armis,

Not guilty.

Iſſue.

As to the reſidue, Actio non, &c.

Becauſe the cloſes were the freehold of one H. B.

And defendants as her ſervants, and by her command, entered, &c.

of the ſaid *H.* and then and there took and carried away the timber ariſing therefrom as the proper timber of the ſaid *H.* continuing the eating up, treading down, and conſuming the graſs and corn in the ſaid cloſes at the ſaid divers days and times by the time in the ſaid declaration above-mentioned, as it was lawful for them: And this they are ready to verify; Wherefore they pray judgment if the ſaid *G.* ought to have or maintain his ſaid action thereof againſt them.

Jo. Tremayne.

Replication, that the cloſes were the freehold of the plaintiff.

And the ſaid *G.* ſays, that he by any thing by the ſaid *R. W.* and *H.* above by pleading alledged ought not to be barred from having his ſaid action thereof againſt them the ſaid *R. W.* and *H.* becauſe he ſays, that the ſaid cloſes called the *Eaſter twelve acres*, the *Weſter twelve acres*, and *Owels*, at the ſaid time in which, *&c.* and at the ſaid other days and times in the ſaid declaration above-mentioned, were the proper ſoil and freehold of the ſaid *G.* And that the ſaid *R. W.* and *H.* of their own proper injury, at the ſaid time in which, *&c.* broke and entered the ſaid cloſes, and with feet in walking trod down and conſumed the ſaid graſs, and with cattle eat up, trod down, and conſumed the ſaid graſs and corn of the ſaid *G.* and cut down and felled the ſaid two oaks, and took and carried away the timber ariſing therefrom, continuing the ſaid treſpaſs as to the eating up, treading down, and conſuming the ſaid graſs and corn in the ſaid

ſaid cloſes at the ſaid divers days and times by the ſaid time in the ſaid declaration above-mentioned, in manner and form as the ſaid *G.* above complains thereof againſt them; *without this*, that the ſaid cloſes, in which the ſaid treſpaſs is above ſuppoſed to be done, are, and at the ſaid time in which, *&c.* were the ſoil and freehold of the ſaid *H. B.* widow, in manner and form as the ſaid *R. W.* and *H.* have above by pleading alledged; And this, *&c.* Wherefore, *&c.* Traverſe.

Henry Pollexfen.

Stafford, to wit. IT is granted by the court here, that *J. H.* widow, ſue for *C. H.* who is under the age of one and twenty years, as next friend to the ſaid *C.* againſt *P. W.* of a plea of treſpaſs and aſſault. Infant admitted to ſue by prochein amy.

Stafford, to wit. *P. W.* puts in his place *P. C.* his attorney, againſt *C. H.* of the plea aforeſaid. Warrant of attorney for the defendant.

Stafford, to wit. *Be it remembered*, That heretofore, to wit, in the term of *St. Michael* laſt paſt, before our lady the queen at *Weſtminſter*, came *C. H.* who is under the age of one and twenty years, by *J. H.* his next friend, hereunto ſpecially admitted by the court, and brought into the court of our ſaid lady the queen then there, his certain bill againſt *P. W.* being in the cuſtody of the marſhal, *&c.* of a plea of treſpaſs and aſſault; and there are pledges of the proſecution, to Memorandum, declaration of a precedent term.

wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words, to wit, *Stafford*, to wit, *C. H.* who is within the age of one and twenty years, by *J. H.* his next friend, hereunto ſpecially admitted by the court, complains of *P. W.* being in the cuſtody of the marſhal, *&c.* for that he on the firſt day of *October* in the ſixth year of the reign of our lady the preſent queen, with force and arms, to wit, with ſwords, ſtaves and knives, made an aſſault upon the ſaid *C.* at *Slowe* in the county aforeſaid, and beat, wounded and evilly treated him, ſo that his life was greatly deſpaired of, and then and there did other injuries to him againſt the peace of our ſaid lady the preſent queen, to the damage of the ſaid *C.* of fifty pounds: And thereupon he brings ſuit, *&c.*

Declaration by an infant for an aſſault and battery. Lill. Ent. 429.

Imparlance.

And now at this day, to wit, on *Friday* next after the octave of *St. Hilary* in this ſame term, until which day the ſaid *P. W.* had leave to imparle to the ſaid bill, and then to anſwer, *&c.* before our lady the queen at *Weſtminſter* came as well the ſaid *C.* by his ſaid next friend, as the ſaid *P. W.* by *P. C.* his attorney, and the ſaid *P. W.* defends the force and injury, when, *&c.* *And* as to the coming with force and arms, or whatever that is againſt the peace of our ſaid lady the preſent queen, and alſo the wounding of the ſaid *C. H.* the ſaid *P.* ſays that he is not guilty thereof: And of this he puts himſelf upon the country: *And* the ſaid *C.* does ſo likewiſe; *And as to* the reſidue of the ſaid treſpaſs and aſſault above ſuppoſed, the ſaid *P.* ſays, that the

Plea. Quoad vi & armis non cul.

Iſſue thereon.

As to the reſidue the plaintiff came

the ſaid *C.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe he ſays, that one *E. M.* eſq; long before the ſaid time in which the ſaid treſpaſs and aſſault is above ſuppoſed to have been done, and alſo at the ſaid time in which, *&c.* was poſſeſſed of a ſtable in *Nantwich* in the county of *Cheſter*, in which ſaid ſtable the ſaid *E.* at the time in which, *&c.* kept his horſes; and the ſaid *E.* being ſo thereof poſſeſſed, the ſaid *C.* at the ſame time in which, *&c.* the ſaid treſpaſs is above ſuppoſed to have been done, to wit, on the ſaid firſt day of *October* in the ſixth year aforeſaid, at *Nantwich* aforeſaid in the county aforeſaid, with force of arms and againſt the will of the ſaid *E.* entered into the ſtable of the ſaid *E.* in and upon the poſſeſſion of the ſaid *E.* and diſturbed the ſaid *E.* in the quiet poſſeſſion thereof, and diſturbed, frightened and ſtartled certain horſes of the ſaid *E.* then being in the ſaid ſtable; upon which the ſaid *P.* then being a ſervant of the ſaid *E.* and having the care of the ſaid ſtable and of the ſaid horſes in the ſaid ſtable, by the command of the ſaid *E.* his maſter, and by his order, at the ſame time in which, *&c.* came to the ſaid *C.* then being in the ſaid ſtable, and requeſted him, that he would go out of the ſaid ſtable and do no further damage in the ſaid ſtable; and the ſaid *C.* then would not go out of the ſaid ſtable; whereby the ſaid *P.* at the ſame time in which, *&c.* as ſervant to the ſaid *E.* and in defence of his poſſeſſion of the ſaid ſtable and of his horſes then being in the ſaid ſtable, and to compel the

into a ſtable (in the county of Cheſter) of defendant's maſter's, and frightened the horſes.

And defendant to put him out moliter manus impoſuit.

the ſaid *C.* to go out of the ſaid ſtable, then and there ſoftly put his hands upon the ſaid *C.* then being in the ſaid ſtable, to put the ſaid *C.* out of the ſaid ſtable, as it was lawful for him; which are the ſame reſidue of the treſpaſs and aſſault aforeſaid, whereof the ſaid *C.* now above complains; *without this* that the ſaid *P.* is guilty of the treſpaſs and aſſault aforeſaid, at *Stone* aforeſaid, or elſewhere out of *Nantwich* aforeſaid in the county of *Cheſter:* And this he is ready to verify: Wherefore he prays judgment if the ſaid *C.* ought to have or maintain his ſaid action thereupon againſt him, *&c.*

Traverſe of the treſpaſs and aſſault.

Replication de injuria ſua propria.

And the ſaid *C.* ſays, that he, by any thing by the ſaid *P.* above by pleading alledged, ought not to be barred from having his ſaid action thereupon againſt him, becauſe he ſays, that the ſaid *P.* of his own proper injury, without ſuch cauſe as by him the ſaid *P.* is above by pleading alledged, made an aſſault upon the ſaid *C.* and beat, wounded, and evilly treated the ſaid *C.* in manner and form as the ſaid *C.* above complains againſt him; And this he prays may be inquired by the country; *And* the ſaid *P.* does ſo likewiſe; *And* becauſe the ſeveral iſſues between the ſaid parties above joined ought to be tried by men of the county palatine of *Cheſter*, where the writ of our lord the king does not go, and not elſewhere; *Therefore* the record of the ſaid plaint is ſent to the juſtices of our lady the queen of the ſaid county of *Cheſter*, ſo that the ſaid juſtices, by writ of our lady the queen of the county duly to be made, cauſe it

Iſſue.

Suggeſtion that the iſſues are triable in Cheſter.

Award of Mittimus to the county palatine.

it to be commanded to the ſheriff of the ſame county, that he cauſe to come before the juſtices of our ſaid lady the queen of the county of *Cheſter* aforeſaid, at the next aſſiſes for that county after the ſaid record ſhall be delivered to them, twelve free and lawful men of the body of the county palatine aforeſaid; by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* and when thoſe iſſues ſhall be tried, that then the ſaid juſtices ſend the record of the ſaid plaint, with all that ſhall be done thereupon before them in the ſaid court of our ſaid lady the queen there, to our ſaid lady the queen at *Weſtminſter*, at a certain day which the ſaid juſtices of the ſaid county palatine ſhall prefix to the ſaid parties in the ſame court there, to hear their judgment thereupon, *&c.* and the ſaid *C.* is told to proſecute with effect at his peril, *&c.* See Theſ. Brev. 164.

Of the term of the Holy Trinity *in the ſixteenth year of the reign of our ſovereign lord king* George *the third.*

Roll

Lee.

Eſſex, to wit. BE *it remembered*, that on *Wedneſday* next after the morrow of the *Holy Trinity* in this ſame term before our ſovereign lord the king at *Weſtminſter*, cometh *J. C.* by *C. B.* his attorney, and bringeth in the Memorandum of the ſame term.

the court of our ſaid lord the king now here his bill againſt *J. S.* eſq; being in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king before the king himſelf, of a plea of treſpaſs; and there are pledges of the proſecution, that is to ſay, *John Doe* and *Richard Roe*, which ſaid bill followeth in theſe words, to wit, *Eſſex*, to wit, *J. C.* complains of *J. S.* eſq; in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king before the king himſelf, *For that* the ſaid *J.* on the firſt day of *December* in the year of our Lord 1737, and at divers other days and times between that day and the day of exhibiting of this bill, with force and arms broke and entered the cloſe of the ſaid *J.* to wit, one piece of ground called the *Reed-ſhore* adjoining on the north-eaſt ſide thereof on a certain creek called *Barking Creek*, and on the ſouth-weſt ſide thereof, in a certain cloſe in the occupation of *S. B.* commonly known by the name of the *Ten Acres*, at the pariſh of *Barking* in the ſaid county of *Eſſex*, and trod down and conſumed with his feet in walking the graſs and reeds of the ſaid *J.* there growing of the value of forty ſhillings, and cut, took, carried away, detained, and converted to his own uſe the reeds, to wit, forty cart-loads of reeds of the ſaid *J.* there growing of the value of twenty pounds, and cut, took, carried away, detained and converted to his own uſe other reeds, to wit, forty cart-loads of reeds of the ſaid *J.* of the value of twenty pounds, found at the pariſh aforeſaid, and did other wrongs to the ſaid *J.* againſt the peace of

Declaration for a treſpaſs in entering plaintiff's cloſe, cutting and carrying away reeds.

of the ſaid lord the king, to the damage of the ſaid *J.* of forty pounds. And thereupon he brings ſuit, *&c.*

And the ſaid *J.* by *D. G.* his attorney, comes and defends the force and injury, when, *&c.* *And* as to the coming with force and arms, and whatever is againſt the peace of the ſaid lord the king, and all the ſaid treſpaſs above ſuppoſed to be done, except the breaking and entering the ſaid cloſe called the *Reed-ſhore*, in which, *&c.* and the treading down and conſuming with feet in walking the ſaid graſs and reeds there growing, and the cutting, taking, carrying away, detaining and converting to his own uſe the ſaid other reeds there growing, ſays, that he is not thereof guilty, as the ſaid *J.* hath thereof above complained againſt him: And hereupon he puts himſelf on the country; *And* the ſaid *J.* does ſo likewiſe: *And* as to the breaking and entering of the ſaid cloſe called the *Reed-ſhore*, in which, *&c.* and the treading down and conſuming with his feet in walking the ſaid graſs and reeds there growing, and the cutting, taking, carrying away, detaining and converting to his own uſe the ſaid other reeds there growing, the ſaid *J.* ſays, that the ſaid *J.* ought not therefore to have or maintain his ſaid action againſt him, becauſe he ſays, that the ſaid cloſe, in which the ſaid treſpaſs was done at the ſaid ſeveral times, when, *&c.* and from time whereof the memory of man is not to the contrary, was and is called and known as well by the name of the *Foreland* as

Plea.

Quoad vi & armis non cul.

Iſſue thereon.

As to the reſidue,

the locus in quo.

by

Parcel of another cloſe. Whereof A.T. ſeiſed in fee, who conveyed to defendant and R. S.

by the name of the *Reed-ſhore*, and for all that time was and is parcel of the ſaid cloſe called the *Ten Acres*, of which ſaid cloſe called the *Ten Acres*, whereof, *&c.* with the appurtenances, *A. T.* ſpinſter, long before the ſaid time, when, *&c.* was ſeiſed in her demeſne as of fee; and being ſo ſeiſed thereof, ſhe the ſaid *A.* long before the ſaid time, when, *&c.*

Leaſe.

to wit, by an indenture made at the pariſh of *Barking* aforeſaid on the fifth day of *April* in the year of our Lord 1766, between the ſaid *A.* by the name of *A. T.* of *Charter-houſe-yard* in the county of *Middleſex*, ſpinſter, one of the daughters and deviſees of *J. T.* late of the ſame place, eſq; deceaſed, of the firſt part, and the ſaid *J.* and Sir *R. S.* bart. by the names of *J. S.* of *Upton* in the pariſh of *Weſt-Ham* in the county of *Eſſex* aforeſaid, eſq; and Sir *R. S.* of *Buckland* in the pariſh of *Lymington* in the county of *Southampton*, bart of the other part, one part of which indenture ſealed

Profert.

with the ſeal of the ſaid *A.* the ſaid *J.* brings here into court, bearing date the ſame day and year, for and in conſideration of a certain ſum of money therein mentioned, did bargain and ſell the ſaid cloſe whereof, *&c.* with the appurtenances (among other things) to the ſaid *J.* and Sir *R.* To have and to hold to the ſaid *J.* and Sir *R.* from the day next before the day of the date of that indenture for and during one whole year from thence next enſuing, and fully to be complete and ended, as by the ſaid indenture more fully appears; by virtue of which ſaid bargain and ſale, and by force of the ſtatute for

tranſ-

transferring uſes into poſſeſſion, they the ſaid *J.* and Sir *R.* became poſſeſſed of the ſaid cloſe, whereof, *&c.* with the appurtenances for and during one whole year, the reverſion thereof belonging to the ſaid *A.* and her heirs; and being ſo poſſeſſed thereof, and the reverſion thereof belonging to the ſaid *A.* and her heirs as aforeſaid, ſhe the ſaid *A.* by another indenture made at the pariſh of *Barking* aforeſaid on the ſixth day of *April* in the year of our Lord 1766 aforeſaid, between the ſaid *A.* by the name of *A. T.* of *Charter-houſe-yard* in the county of *Middleſex* aforeſaid, ſpinſter, one of the daughters and deviſees of the ſaid *J. T.* late of the ſame place, eſq; deceaſed, of the one part, and the ſaid *J.* and Sir *R.* by the names of *J. S.* of *Upton* in the pariſh of *Weſt-Ham* aforeſaid in the county of *Eſſex* aforeſaid, eſq; and Sir *R. S.* of *Buckland* in the pariſh of *Lymington* aforeſaid in the county of *Southampton* aforeſaid, bart. of the other part, one part of which ſaid laſt mentioned indenture ſealed with the ſeal of the ſaid *A.* the ſaid *J.* brings here into court, bearing date the ſame day and year, for the conſideration therein mentioned, did releaſe unto the ſaid *J.* and Sir *R.* the reverſion of the ſaid cloſe, whereof, *&c.* with the appurtenances among other things, To have and to hold unto the ſaid *J.* and Sir *R.* and the heirs and aſſigns of the ſaid *J.* to and for the only proper uſe and behoof of the ſaid *J.* and Sir *R.* and of the heirs and aſſigns of the ſaid *J.* for ever, as by the ſaid laſt mentioned indenture

Releaſe.

Profert.

Whereby defendant and R. S. became ſeiſed.

ture more fully appears; by virtue of which ſaid bargain and ſale and releaſe, and by force of the ſtatute for transferring uſes into poſſeſſion, they the ſaid *J.* and Sir *R.* became ſeiſed of the ſaid cloſe, whereof, *&c.* with their appurtenances in their demeſne as of freehold for and during their natural lives; and being ſo ſeiſed thereof, the ſaid *J.* claiming the ſaid cloſe called the *Reed-ſhore*, in which, *&c.* parcel, *&c.* by virtue of a certain deed of feoffment to him thereof made by the ſaid *A.* before the making of the ſaid indenture of bargain and ſale, whereas no eſtate or intereſt in the ſaid cloſe, in which, *&c.* parcel, *&c.* paſſed into the poſſeſſion of the ſaid *J.* by virtue of the ſaid deed of feoffment, afterwards, and before the ſaid firſt time, when, *&c.* to wit, on the thirtieth day of *November* in the year of our Lord 1766 aforeſaid, entered into the ſaid cloſe in which, *&c.* parcel, *&c.* in and upon the poſſeſſion of the ſaid *J.* and Sir *R.* thereof, and ejected, expelled, and put out the ſaid *J.* and Sir *R.* from their poſſeſſion and occupation thereof; whereupon he the ſaid *J.* in his own right and in the right of the ſaid Sir *R.* and by his command, afterwards, to wit, on the ſaid firſt day of *December*, in which, *&c.* re-entered the ſaid cloſe, in which, *&c.* parcel, *&c.* and on that day, and at divers other days, and times between that day and the day of the exhibiting of the ſaid bill of the ſaid *J.* againſt him, broke and entered that cloſe, in which, *&c.* as the cloſe of the ſaid *J.* and Sir *R.* and trod down and conſumed with his feet in walking

That plaintiff claiming right,

entered on the poſſeſſion of defendant and R. S.

Whereupon defendant in his own right, and in the right of R. S. and by his command re-entered, and juſtifies.

walking the ſaid graſs and reeds there growing as the graſs and reeds of the ſaid *J.* and Sir *R.* and cut, took and carried away, detained and converted to his own uſe the ſaid other reeds there growing as the reeds of the ſaid *J.* and Sir *R.* as it was lawful for him: And this he is ready to verify: Wherefore he prays judgment, if the ſaid *J.* ought to have or maintain his ſaid action therefore againſt him, *&c.*

William Holt.

And the ſaid *J.* as to the ſaid plea of the ſaid *J.* as to the breaking and entering of the ſaid cloſe, in which, *&c.* and the treading down and conſuming with his feet in walking the ſaid graſs and reeds there growing, and the cutting, taking, carrying away, detaining and converting to his own uſe the ſaid other reeds there growing, by him done as aforeſaid, by him above pleaded in bar, ſays, that by reaſon of any thing above pleaded by the ſaid *J.* in that reſpect, he ought not to be barred from having his ſaid action therefore againſt him, becauſe proteſting that the ſaid cloſe, in which, *&c.* at the ſaid ſeveral times when, *&c.* was not called the *Foreland*, as the ſaid *J.* hath by his ſaid plea in that reſpect above alledged, for replication in this reſpect the ſaid *J.* ſays, that the ſaid cloſe in the ſaid declaration of the ſaid *J.* above-mentioned, in which, *&c.* now is and at the ſeveral times, when, *&c.* and from time whereof the memory of man is not to the contrary, has been parcel

Replication.

The locus in quo,

Parcel of the manor of B.

parcel of the manor of *Barking* in the ſaid county, and a cuſtomary tenement of the ſaid manor, and demiſed and demiſeable by the copy of the rolls of the court of the ſaid manor by the lord of the ſaid manor, by his ſteward of the court of the ſaid manor or his deputy for the time being, to any perſon or perſons willing to take the ſame in fee-ſimple or otherwiſe, at the will of the lord according to the cuſtom of the ſaid manor; of which ſaid manor, with the appurtenances, Sir *W. H.* knight and baronet, one of the aldermen of the city of *London*, was ſeiſed in his demeſne as of fee; and being ſo ſeiſed thereof he the ſaid Sir *W.* at his court of his ſaid manor held in and for his ſaid manor on *Thurſday* the fifth day of *April* in the year of our Lord 1763, by *E. G.* eſq; then deputy of *W. N.* eſq; then ſteward of the court of the ſaid manor, by the copy of rolls of the court of the ſame manor, granted the ſaid cloſe, with the appurtenances, to the ſaid *J.* and *S.* his wife, to have and to hold to the ſaid *J.* and *S.* his wife, and their heirs and aſſigns for ever, at the will of the lord, according to the cuſtom of the ſaid manor; by virtue of which ſaid grant, they the ſaid *J.* and *S.* his wife, entered into the ſaid cloſe, with the appurtenances ſo granted to them as aforeſaid, and at the ſaid ſeveral times when, *&c.* were, and ſtill are ſeiſed thereof in their demeſne as of fee, at the will of the lord, according to the cuſtom of the ſaid manor; and being ſo ſeiſed thereof, the ſaid *J.* of his own wrong, at the ſaid ſeveral times, when, *&c.* broke and entered

and granted by copy

to the plaintiff and his wife in fee.

entered the ſaid cloſe of the ſaid *J.* in which, *&c.* and trod down and conſumed with his feet in walking the ſaid graſs and reeds there growing, and cut, took, carried away, detained and converted to his own uſe the ſaid other reeds there growing, as the ſaid *J.* hath thereof above complained againſt him; *without this*, that the ſaid cloſe in which, *&c.* was parcel of the ſaid cloſe called the *Ten Acres*, as the ſaid *J.* hath by his ſaid plea above alledged: And this he is ready to verify: Wherefore, inaſmuch as the ſaid *J.* hath above acknowledged the ſaid breaking and entering of the ſaid cloſe in which, *&c.* and the treading down and conſuming with his feet in walking the ſaid graſs and reeds there growing, and the cutting, taking, carrying away, detaining and converting to his own uſe the ſaid other reeds there growing, by him done as aforeſaid, the ſaid *J.* prays judgment and his damages by reaſon of that treſpaſs, to be adjudged to him, *&c.*

Traverſe that the locus in quo was parcel, &c.

Edward Green.

And the ſaid *J.* ſays as before, that the ſaid cloſe in which, *&c.* was parcel of the ſaid cloſe called the *Ten Acres*, as the ſaid *J.* has by his ſaid plea above alledged: And hereupon he puts himſelf upon the country; *And* the ſaid *J.* does ſo likewiſe; *Therefore* as well to try this iſſue as the ſaid other iſſue above joined between the parties, let the jurors come before our lord the king at *Weſtminſter* on *Wedneſday* next after three weeks from the

Rejoinder, That it was parcel, &c.

Iſſue.

Venire awarded to try both iſſues.

day of the *Holy Trinity*, who are in no wiſe related either to the ſaid *J. C.* or to the ſaid *J. S.* to make a certain jury of the country between the ſaid parties of the plea aforeſaid, to recognize upon their oaths the whole truth of and concerning the premiſſes, becauſe as well the ſaid *J. S.* as the ſaid *J. C.* between whom the matter in variance is, have put themſelves upon that jury; The ſame day is given to the parties aforeſaid at the ſame place.

Hilary 13 *Geo.* 3.

Memorandum of a precedent term.

Suſſex, *to wit.* *BE it remembered*, That in the term of *St. Michael* laſt paſt before our lord the king at *Weſtminſter* came *P. S.* eſq; by ——— his attorney, and brought in the court of our ſaid lord the king then there his bill againſt *J. B.* in the cuſtody of the marſhal of the king's *Marſhalſea* before the king himſelf, of a plea of treſpaſs upon the caſe; and there are pledges of proſecuting, to wit, *John Doe* and *Richard Roe*; which ſaid bill follows in theſe words; *Suſſex*, to wit, *P. S.* eſq; complains of *J. B.* in the cuſtody of the marſhal, *&c.* *For that* the ſaid *J.* on the ninth day of *June* in the eleventh year of the reign of our preſent ſovereign lord the king, with force and arms did break and enter the hop-gardens (to wit, three hop-gardens) of the ſaid *P.* at the pariſh of *Wivelsfield* in the county aforeſaid, and did pull up, throw down and proſtrate the hop-poles (to wit, 12,000 hop-

Declaration in treſpaſs for entering the plaintiff's hop gardens, pulling down the hop-poles, and cutting the hop binds.

hop-poles) of him the ſaid *P.* ſet up and ſtanding in his ſoil in the hop-gardens aforeſaid, and did cut, crop, break, bruiſe, and ſpoil the hop-binds (to wit, 100,000 hop-binds) of the ſaid *P.* to the value of 50*l.* growing in the hop-gardens aforeſaid, whereby the ſaid *P.* loſt the greateſt part of the profit of the hop-gardens aforeſaid for a long time (to wit, for ——— then next following) *and that* the ſaid *J.* on the ninth day of *June* in the eleventh year aboveſaid, with force and arms, did break and enter the hop-garden of the ſaid *P.* at the pariſh of *Lineſield* in the county aforeſaid, and did pull up, throw down and proſtrate the hop-poles (to wit, 3000 hop-poles) of the ſaid *P.* ſet up and ſtanding in the ſame hop-garden, and did cut, crop, break, bruiſe and ſpoil the hop-binds (to wit, 30,000 hop-binds) of the ſaid *P.* to the value of 30*l.* growing in the ſame hop-garden, whereby the ſaid *P.* loſt the greateſt part of the profit of his laſt mentioned hop-garden for a long time, to wit, for —— then next following, and did other wrongs to the ſaid *P.* to his great damage, and againſt the peace of our ſaid ſovereign lord the king, to the damage of the ſaid *P.* of 60*l.* And therefore he brings his ſuit, *&c.*

To which the defendant pleaded the general iſſue.

Hilary 36, 37 *Car.* 2. *ro.* 1157.

B. R. Declaration in treſpaſs, the plaint being removed out of the county court, becauſe the defendant pleaded liberum tenementum. Lill. Ent. 437.

Kent, *to wit.* *A.* *B.* lately in the county court of Sir *C. D.* knt. ſheriff of the county aforeſaid, at *M.* in the county aforeſaid, complained againſt *E. F.* of a plea of treſpaſs; which ſaid plaint, at the prayer of the ſaid *A. B.* is had here at this day, to wit, from the day of *Eaſter* in fifteen days, by the writ of our lord the king of *recordari facias loquelam*, for that the ſaid *E. F.* in his plea in the ſaid county court, pleads freehold; and now at this day came as well the ſaid *A. B.* by *J. L.* his attorney, as the ſaid *E. F.* by *R. S.* his attorney: And upon this the ſaid *A. B.* by his ſaid attorney complains, *that* [here inſert the declaration.]

Hilary 36, 37 *Car.* 2. *ro.* 1157.

Declaration in treſpaſs removed by re. fa. lo. to have coſts where the damages in the plaint are under forty ſhillings. Lill. Ent. 375. Raſt. Ent. 570. 1 Brownl. 187. Stat. 22, 23 Car. 2.

Kent, *to wit.* SIR *T. W.* bart. lately in the county court of *A. B.* eſq; ſheriff of the county aforeſaid, held at *Maidſtone* in the county aforeſaid, complained againſt *C. D.* of a plea of treſpaſs; which ſaid plaint, at the prayer of the ſaid Sir *T. W.* is had here at this day, to wit, from the day of the *Holy Trinity*, &c. by the writ of our lord the king of *recordari facias loquelam*: And now at this day comes as well the ſaid Sir *T. W.* by *S. R.* his attorney, as the ſaid *C. D.* by *E. F.* his attorney; And upon this the ſaid Sir *T. W.* by his attorney, complains that, &c.

If

If the defendant in the country has pleaded liberum tenementum, *and the plaintiff removes the plaint without cauſe ſhewn in the writ, and the plaint only is returned, and not the plea (which is neceſſary to be done, becauſe the court ought not to take cognizance of a plea under forty ſhillings,)* Quære *how to declare, to wit, which ſaid plaint, at the prayer of the ſaid plaintiff, for that the ſaid defendant in that plea in the ſaid county has claimed freehold, is had here,* &c.

Lambert *and* Thurſton, 1 W. & M. *Treſpaſs* quare clauſum fregit *was removed by* recordari, *where the plaintiff declared to his damage thirty ſhillings. Defendant demurred, becauſe the court had not juriſdiction of the cauſe where damages are under forty ſhillings. And it was urged* pro quer. *that the plaintiff had removed this cauſe, becauſe the defendant had pleaded* liberum tenementum, *and ſo it is not triable in the county court.* Co. Lit. 118. & 2 Inſt.

Chief juſtice: It ſhall be intended, that this action was originally in this court, becauſe it is vi & armis, *which cannot be in a declaration in the county court; and where it is removed, the declaration ought to be without* vi & armis.

Middleſex, to wit. D. *D.* complaineth of *T. D.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf being, of this, that he the ſaid *T.* on the 23d day of *May* in the 6th year of the reign of our ſovereign lord *George* III. now king of *Great Britain*, *&c.* with

Treſpaſs for entering a houſe.

with force and arms, to wit, with ſwords, ſtaves and knives, broke and entered into the dwelling houſe of him the ſaid *D.* at the pariſh of *St. Giles in the Fields* in the county aforeſaid; and greatly diſturbed him the ſaid *D.* in his quiet poſſeſſion and occupation thereof, and drove out and removed him the ſaid *D.* from his poſſeſſion and occupation thereof, and the ſaid *D.* being ſo driven out and removed for a long time, to wit, for the ſpace of 24 hours kept out; and other enormities to him then and there did, againſt the peace of our ſaid ſovereign lord the now king, and to the damage of the ſaid *D.* 50*l.* and therefore he bringeth ſuit, *&c.*

T. A. for the plaintiff.
R. R. for the defendant. } Pledges, *&c.*

For an aſſault,

Middleſex, to wit, *M. W.* widow, complaineth of *T. D.* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf being, of this, that the ſaid *T.* on the 23d day of *May* in the 6th year of the reign of our ſovereign lord *George* III. now king of *Great Britain*, *&c.* with force and arms, to wit, with ſwords, ſtaves and knives, at the pariſh of *St. Giles in the Fields* in the county aforeſaid, made an aſſault on the ſaid *M.* and the ſaid *M.* then and there beat, wounded, and evilly treated, ſo that her life was greatly deſpaired of, and other enormities to her then and there did againſt

againſt the peace of our ſaid ſovereign lord the now king; and to the damage of the ſaid *M.* 50*l.* And therefore ſhe bringeth ſuit, *&c.*

T. A. for the plaintiff.
R. R. for the defendant. } Pledges, *&c.*

Surry, *to wit.* *T B.* complains of *T. C.* in the cuſtody of the marſhal of the *Marſhalſea* of the lord the king before the king himſelf, for that the ſaid *T. C.* on the 12th day of *January* in the year of our Lord 1767, with force and arms, to wit, with ſwords, ſtaves and knives, aſſaulted the ſaid *T. B.* at *Guilford* in the county aforeſaid, and beat, wounded and ill treated him, ſo that his life was greatly deſpaired of, and impriſoned the ſaid *T. B.* there, and kept him detained there in priſon for a long time, to wit, for the ſpace of two days; and alſo for that the ſaid *T. C.* afterwards, to wit, on the ſaid 12th day of *January* in the year aforeſaid, with force and arms, to wit, with ſwords, ſtaves and knives, again aſſaulted the ſaid *T. B.* at *G.* aforeſaid, and beat, wounded and ill treated him, ſo that his life was greatly deſpaired of, and did other wrongs to the ſaid *T. B.* againſt the peace of the ſaid lord the now king, *&c.* to the damage of the ſaid *T. B.* of 100*l.* and therefore he bringeth his ſuit, *&c.*

Declaration in treſpaſs, aſſault and impriſonment. B. R.

Second count for another aſſault.

And the ſaid *T. C.* by *A. B.* his attorney, cometh and defendeth the force and injury, when,

Plea, Not guilty.

when, &c. and ſaith, that he is Not guilty of the treſpaſſes aforeſaid, as the ſaid *T. B.* above complaineth againſt him the ſaid *T. C.* and of this he putteth himſelf upon the country; and the ſaid *T. B.* doth likewiſe the ſame. And the ſaid *T. C.* for further plea in this behalf, by leave of the court here for this purpoſe firſt had and obtained, according to the form of the ſtatute in ſuch caſes made and provided, further ſaith, that the ſaid *T. B.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith that he is Not guilty of the ſaid treſpaſſes, or any of them within four years next before the exhibiting the ſaid bill of the ſaid *T. B.* and this the ſaid *T. C.* is ready to verify: Wherefore he prayeth judgment if the ſaid *T. B.* ought to have or maintain his ſaid action againſt him, &c.

Iſſue.

And Not guilty within four years.

Owen Ruffhead.

And the ſaid *T. B.* as to the ſaid latter plea of the ſaid *Thomas Cleland* above pleaded in bar ſaith, that he by any thing in that plea contained ought not to be barred from having his aforeſaid action thereof maintained againſt the ſaid *T. C.* becauſe he ſaith, that he the ſaid *T. C.* at the time when the ſaid cauſe of action accrued to the ſaid *T. B.* was abroad and beyond the ſeas, to wit, in the *Weſt Indies*; and that the ſaid *T. C.* afterwards, to wit, on the firſt day of *Auguſt* in the year of our Lord 1764, arrived from parts beyond the ſeas aforeſaid in this

Replication, that when cauſe of action accrued defendant was beyond ſea, and plaintiff exhibited his bill within four years after defendant's firſt arrival into this kingdom. Stat. 4 & 5 Ann. c. 16. §.

this kingdom, to wit, at *Guilford* aforeſaid, which ſaid arrival of the ſaid *T. C.* into this kingdom was the firſt and next arrival of the ſaid *T. C.* into this kingdom after the ſaid cauſe of action ſo accrued to the ſaid *T. B.* And the ſaid *T. B.* further ſaith, that he the ſaid *T. B.* exhibited his ſaid bill againſt the ſaid *T. C.* within four years next after the ſaid *T. C.* his ſaid firſt arrival into this kingdom; and this he is ready to verify: Wherefore he prayeth judgment, and his damages on occaſion of the premiſſes to be adjudged to him, *&c.*

E. G.

And the ſaid *T. C.* ſays, that true it is, that at the ſaid times when the above treſpaſſes are above ſuppoſed to have been committed, he the ſaid *T. C.* was abroad beyond the ſeas, to wit, in the *Weſt Indies*, as in the ſaid replication is above alledged; but the ſaid *T. C.* further ſaith, that afterwards and long before the ſaid firſt day of *Auguſt* in the ſaid year 1764, to wit, on the firſt day of *Auguſt* in the year of our Lord 1762, he the ſaid *T. C.* firſt arrived from the ſaid parts beyond the ſeas into this kingdom after the ſaid cauſes of action accrued, to wit, at *Guilford* aforeſaid; *without this*, that the ſaid *T. B.* exhibited his ſaid bill againſt him the ſaid *T. C.* within four years next after the ſaid *T. C.*'s firſt arrival into this kingdom, in manner and form as the ſaid *T. B.* hath in his ſaid replication above alledged; and this he is ready to verify: Wherefore as before he

Rejoinder.

Traverſe.

he prays judgment, and that the ſaid *T. B.* may be barred from having his ſaid action in this behalf againſt him, *&c.*

W. Holt.

Declaration for an aſſault and impriſonment. B. R.

Middleſex, *to wit.* *Joſeph Bliſs* complains of *Robert Rawlings* in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king before the king himſelf being, for this, that the ſaid *R.* on the 20th day of *October* in the year of our Lord 1766, with force and arms, to wit, with ſwords, ſtaves and knives, upon him the ſaid *J.* at *Weſtminſter* in the ſaid county of *M.* made an aſſault and him did beat, wound and impriſon, and evilly treat, ſo that of his life it was greatly deſpaired, and alſo without any reaſonable cauſe, againſt the laws and cuſtoms of this kingdom, and againſt the peace of our ſovereign lord the now king, then and there did impriſon the ſaid *J.* and for a long time, that is to ſay, for the ſpace of two days, detained him in priſon, and other wrongs to him then and there did, to the great damage of the ſaid *J.* and againſt the peace of our ſovereign lord the now king; whereby the ſaid *J.* ſaith that he is prejudiced and hath damage to the value of 30 *l.* and therefore he brings ſuit, *&c.*

Plea as to part Not guilty.

And the ſaid *R.* by *J. D.* his attorney cometh and defendeth the force and injury, when, *&c.* and as to the coming with force and arms, and whatſoever is againſt the peace of our ſovereign lord the now king,

and all the treſpaſs above ſuppoſed to be done, except the ſaid aſſault upon him the ſaid *J.* and the beating, impriſoning, and evilly treating him and detaining him in priſon for the time mentioned in the ſaid declaration, ſays, that he is Not guilty thereof; and of this he puts himſelf upon the country; *And* the ſaid *J.* does ſo likewiſe. Iſſue.

And as to the ſaid aſſault upon the ſaid *J.* and the beating, impriſoning and evilly treating him and detaining him in priſon, above ſuppoſed to be done, the ſaid *R.* ſaith, that the ſaid *J.* ought not to have or maintain his ſaid action therefore againſt him, becauſe he ſaith, that before the ſaid time, when, *&c.* to wit, at the court of record of his preſent majeſty of his palace at *Weſtminſter*, held at *Southwark* in the county of *Surry* within the juriſdiction of that court, on *Friday* the 8th day of *October* in the 10th year of the reign of his preſent majeſty king *George* the third, before *William* earl *Talbot*, ſteward of the king's houſhold, Sir *Sidney Meadows*, knt. marſhal of the ſaid houſhold, and *Levett Blackbourn*, eſq; ſteward of that court, then judges of the ſame court by virtue of the *Letters Patent* of *Charles* the ſecond, late king of *England*, bearing date at *Weſtminſter* the fourth day of *October* in the 16th year of his reign, the ſaid *R. R.* levied a certain plaint againſt the ſaid *J.* of a plea of treſpaſs on the caſe to his damage of 10*l.* for a cauſe of action ariſing at *Weſtminſter* aforeſaid within the juriſdiction of that court, and then and there found

As to the reſidue a juſtification under proceſs of the palace court at defendant's ſuit.

Letters patent dated 4 Oct. 16 Car. 2.

found pledges of proſecuting the ſame plaint, to wit, *John Doe* and *Richard Roe*, and prayed proceſs of the ſame court to be made againſt the ſaid *J.* upon the ſaid plaint; and thereupon ſuch proceedings were had in the ſame court on the ſaid plaint ſo levied as aforeſaid, that afterwards, to wit, at the ſaid court of record of his ſaid majeſty of his palace at *Weſtminſter*, held at *Southwark* aforeſaid within the juriſdiction of that court, on *Friday* the 15th day of *October* in the 10th year aforeſaid before the ſaid *W.* duke of *D.* ſteward of the king's houſhold aforeſaid, Sir *P. M.* knt. marſhal of the ſaid houſhold, and Sir *T. A.* knt. ſteward of that court, then judges of the ſame court by virtue of the letters patent aforeſaid, there iſſued out of the ſame court a certain writ of his ſaid majeſty, directed to the bearers of the verge of his ſaid majeſty's houſhold, the officers and miniſters of that court, and every of them, that they, or any one of them, ſhould take the ſaid *J. B.* and *John Doe*, if they ſhould be found within the juriſdiction of the ſaid court, and them ſafely keep, ſo that they, or one of them, might have their bodies before the judges of the ſame court at the then next court of his ſaid majeſty's palace at *Weſtminſter* aforeſaid, on *Friday* the 22d day of *October* then next following, to be held at *Southwark* aforeſaid in the ſaid county of *S.* to anſwer to the ſaid *Robert* of the ſaid plea of treſpaſs on the caſe, to his damage of 10*l.* and that they or one of them ſhould have there then that writ; and the

Taliter proceſs.

the ſaid *R.* afterwards, and before the return of the ſaid writ, and before the ſaid time, when, *&c.* to wit, on the ſaid 20th day of *October* at *Weſtminſter* aforeſaid, delivered the ſaid writ to one *W. Kirk*, being then and continually afterwards, and at the return thereof one of the bearers of the verge of his ſaid majeſty's houſhold, and an officer and miniſter of the ſaid court of his ſaid majeſty's palace at *Weſtminſter*, and requeſted him the ſaid *W.* to execute the ſame in due form of law, by virtue of which ſaid writ the ſaid *W. K.* afterwards and before the return thereof, to wit, at the ſaid time, when, *&c.* at *Weſtminſter* aforeſaid, and within the juriſdiction of the ſaid court of his majeſty's palace at *Weſtminſter*, at the requeſt of the ſaid *R.* gently laid his hands on the ſaid *J.* to arreſt him by virtue of that writ, and then and there arreſted him by virtue of the ſaid writ, and kept him in cuſtody there for the time mentioned in the ſaid declaration (for want of ſufficient bail for his appearance according to the exigency of the ſaid writ,) ſo that the ſaid *W. K.* might have his body before the ſaid judges mentioned in the ſaid writ at the return thereof, to anſwer to the ſaid *R.* in his plea aforeſaid; and the ſaid *W. K.* at the ſaid then next court of our ſaid lord the king of his palace at *Weſtminſter*, held before the above named judges of the ſaid court at *Southwark* aforeſaid in the ſaid county of *S.* within the juriſdiction of the ſaid court, on *Friday* the 22d day of the ſaid month of *October*, returned

turned upon the ſaid writ to the ſaid judges of the ſaid court that he had took the body of the ſaid *J.* and that he had the ſame ready at the day and place in the ſaid writ mentioned, as by the ſaid writ he was commanded; which are the ſame aſſault upon the ſaid *J.* and the beating, impriſoning, and evilly treating him and detaining him in priſon for the time mentioned in the ſaid declaration, whereof the ſaid *J.* above complains againſt the ſaid *R.* and this he is ready to verify: Wherefore he prays judgment if the ſaid *J.* ought to have or maintain his ſaid action therefore againſt him, *&c.*

J. D.

Replication de injuria ſua propria.

And the ſaid *J.* to the ſaid plea of the ſaid *R.* as to the ſaid aſſault upon the ſaid *J.* and the beating, impriſoning, and evilly treating him and detaining him in priſon aforeſaid, ſaith, that the ſaid *J.* ought not to be precluded from having his ſaid action to be maintained againſt the ſaid *R.* for the ſame, becauſe he ſaith, that he the ſaid *R.* at the ſaid time, when, *&c.* at *Weſtminſter* aforeſaid, of his own wrong made an aſſault upon him the ſaid *J.* and then and there beat, wounded, impriſoned, and evilly treated the ſaid *J.* and detained him in priſon during the time aforeſaid, without any ſuch cauſe by him the ſaid *R.* at the time of his levying the plaint by him the ſaid *R.* againſt the ſaid *J.* above mentioned in the ſaid plea; or any cauſe of action againſt the ſaid *J.* ariſing within the juriſdiction of his ſaid majeſty's

jeſty's palace court, in manner and form as the ſaid *R.* hath above in pleading alledged; and this the ſaid *J.* is ready to verify: Wherefore he prays judgment, and his damages by occaſion of the premiſſes to be adjudged to him, *&c.*

J. M.

Middleſex, to wit. *T. S.* eſq; complaineth of *J. F.* eſq; in the cuſtody of the marſhal, *&c.* for that, that the ſaid *J.* on the 10th day of *January* in the 10th year of the reign of the lady *A.* late queen of *Great Britain*, *&c.* at the pariſh of *St. Clement Danes* in the ſaid county of *M.* with force and arms, *&c.* made an aſſault on *M.* the wife of the ſaid *T. S.* and then and there beat, wounded, and ill treated the ſaid *M.* and then and there led away the ſaid *M.* and there detained and kept the ſaid *M.* from the ſaid *T.* contrary to the will of the ſaid *T.* from that time until the 11th day of —— whereby the ſaid *T.* for the whole time aforeſaid, there intirely loſt the comfort, love, affection, help, ſolace and counſel, which the ſaid *T.* might and could have had with his ſaid wife; and then and there did other *injuries* to the ſaid *T.* to the great damage of the ſaid *T.* and contrary to the peace of the ſaid late queen, and of our ſaid lord the preſent king. Wherefore the ſaid *T.* ſaith that he is injured and hath damage

Declaration in treſpaſs for a criminal converſation with the plaintiff's wife. B. R.

mage to the value of 10,000*l.* and thereof he brings ſuit, *&c.* *

Declaration in treſpaſs, clauſum fregit, treading down the graſs, and cutting down and carrying away trees. B. R.

Kent, *to wit.* *M. W.* complaineth againſt *J. N.* in cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, for this, to wit, that the ſaid *J.* on the 10th day of *October* in the year of our Lord 1764, and on divers other days and times between that day and the 25th day of *December* then next following, with force and arms, *&c.* the cloſes of the ſaid *M.* that is to ſay, one cloſe called the *Garden*, one other cloſe called the *Morſery Ground*, and one other cloſe called the *Fifteen Acres*, and one other cloſe of the ſaid *M.* at the pariſh of *St. Nicholas* and ——— in *Deptford* in the ſaid county, he broke and entered, and the graſs of the ſaid *M.* there lately growing, of the value of 40*s.* with his feet in walking trod down and conſumed, and the trees of the ſaid *M.* that is to ſay, 500 aſh trees, 500 elm trees, 500 yew trees, 500 apricot trees, 500 peach trees, 500 nectarine trees, 500 apple trees, 500 pear trees, 500 plum trees, 500 cher-

* This declaration was drawn by Mr. *Reeve*; the alterations were made by Serjeant *Pengelly*, he would not let *carnaliter cognovit* ſtand, and ſaid *rapuit* was as well left out, for if proved is felony, and deſtroys the action; he ſaid it was beſt in all theſe actions to lay the declaration as general as the caſe would allow: the words 'other enormities or injuries,' letting the plaintiff into a large proof in theſe actions.

ry

ry trees, 500 gooſeberry trees, of the value of 200 *l.* there lately growing, felled, cut down, dug up, took and carried away and converted and diſpoſed thereof to his own uſe; and other injuries to her then and there did againſt the peace of our lord the preſent king, and to the damage of the ſaid *M.* 300 *l.* and thereof ſhe bringeth ſuit, *&c.*

Pledges, *&c.*

Writs, &c.

Trinity *term in the ſixteenth year of king* George *the third.*

OUR lord the king ſent to the ſheriff of *Middleſex* his writ cloſe in theſe words, to wit, *George* the third, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, *&c.* to the ſheriff of *Middleſex*, greeting: Whereas we heretofore commanded our ſheriff of *Middleſex*, that of the goods and chattels which were of *W. B.* deceaſed, at the time of his death, in the hands of *J. W.* and *M.* his wife, executrix of the laſt will and teſtament of the ſaid *W. B.* deceaſed, in his bailiwic, he ſhould cauſe to

Entry of ſcire fieri inquir' againſt baron and feme executrix.

Fi. fa. to ſheriff of Middleſex, de bonis teſtatoris, ſi, &c. et ſi non, &c.

Coſts de bonis propriis.

be made as well twenty-four pounds fourteen ſhillings, which *S. B.* widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits of *E. P.* deceaſed, at the time of his death, who died inteſtate, had in our court before us at *Weſtminſter* recovered againſt them by occaſion of the not performing of certain promiſes and undertakings made by the ſaid *W. B.* in his life-time to the ſaid *E. P.* in his life-time, as alſo twenty ſhillings and nine pounds ſixteen ſhillings, which were adjudged to the ſaid *S.* in our ſaid court before us, for her coſts and charges by her about her ſuit in that behalf expended; whereof the ſaid *J.* and *M.* were convicted, as appeared to us of record, if they had ſo much in their hands to be adminiſtered; and if they had not ſo much, then the ſaid twenty ſhillings and nine pounds ſixteen ſhillings of the proper goods and chattels of the ſaid *J.* and *M.* and that he ſhould have that money before us at *Weſtminſter*, at a certain day now paſt, to render to the ſaid *S.* for her damages, coſts and charges aforeſaid:

Return nulla bona.

And our ſaid ſheriff of *Middleſex* at that day returned to us, that the ſaid *J.* and *M.* had no goods or chattels in his bailiwic, which were of the ſaid *W. B.* at the time of his death, in their hands to be adminiſtered, whereof he could cauſe to be made the ſaid twenty four pounds fourteen ſhillings of damages aforeſaid, and twenty ſhillings and nine pounds ſixteen ſhillings of coſts and charges aforeſaid, or any part thereof: And that the ſaid *J.* and *M.* had no goods and chattels of their

their own proper goods and chattels in his bailiwic, whereof he could cauſe to be made the ſaid twenty ſhillings, and nine pounds fixteen ſhillings of coſts and charges aforeſaid, or any part thereof: Whereupon, on the behalf of the ſaid *S.* it was ſufficiently teſtified in the court before us, that the ſaid *J.* and *M.* had in the county of *Lincoln* ſufficient goods and chattels which were of the ſaid *W. B.* at the time of his deceaſe, in their hands to be adminiſtered, whereof the ſaid twenty-four pounds fourteen ſhillings, and twenty ſhillings and nine pounds ſixteen ſhillings, might be cauſed to be made: And it was further teſtified in our ſaid court before us, that the ſaid *J.* and *M.* had in the ſaid county of *Lincoln* ſufficient of their own proper goods and chattels, whereof the ſaid twenty ſhillings and nine pounds ſixteen ſhillings might be cauſed to be made: *We* therefore commanded our ſheriff of *Lincoln*, that of the goods and chattels which were of the ſaid *W. B.* at the time of his death, in the hands of the ſaid *J.* and *M.* in his bailiwic, he ſhould cauſe to be made as well the ſaid twenty-four pounds fourteen ſhillings, as the ſaid twenty ſhillings and nine pounds ſixteen ſhillings, if they had ſo much in their hands to be adminiſtered; and if they had not ſo much in their hands, then the ſaid twenty ſhillings and nine pounds ſixteen ſhillings of their own proper goods and chattels; and that he ſhould have that money before us at *Weſtminſter* at a certain day alſo now paſt, to render to the ſaid *S.* for her damages, coſts and charges aforeſaid.

Fi. fa. to the ſheriff of Lincoln.

Return coſts levied de bonis propriis.

And our ſaid ſheriff of *Lincoln* at that day returned to us, that by virtue of the ſaid writ to him directed he had cauſed to be made of the proper goods and chattels of the ſaid *J.* and *M.* the ſaid ſum of twenty ſhillings and nine pounds ſixteen ſhillings for the ſaid coſts and charges, which money he had ready to render, as in the ſaid writ he was commanded: *And* he did further certify, that the ſaid *J.* and *M.* had not any goods and chattels which were of the ſaid *W. B.* at the time of his death, in their hands to be adminiſtered, within his bailiwic, whereof he could cauſe to be made the ſaid ſum of twenty-four pounds fourteen ſhillings of damages aforeſaid, or any part thereof: And becauſe the ſaid returns are conceived to be in delay of the execution of the damages aforeſaid; and alſo for that in our ſaid court before us, on behalf of the ſaid *S.* it is ſufficiently teſtified, that divers goods and chattels, which were of the ſaid *W. B.* at the time of his death, have ſince the death of the ſaid *W. B.* come to the hands and poſſeſſion of the ſaid *J.* and *M.* to be adminiſtered, which goods and chattels the ſaid *J.* and *M.* have ſold and waſted, and have converted and diſpoſed of that money thereupon received to their own proper uſe; and that the reſidue of the goods and chattels which were of the ſaid *W. B.* at the time of his deceaſe, have been eloined by the ſaid *J.* and *M.* to places unknown to the ſaid *S.* and by them converted to their own proper uſe, with intent that the execution of the damages aforeſaid might not be made;

Nulla bona teſtatoris.

Suggeſtion of a devaſtavit.

made; We, being unwilling that thoſe things which in our ſaid court before us have been rightly acted or adjudged, ſhould be rendered void by art or deceit, command you that of the goods and chattels which were of the ſaid *W. B.* at the time of his deceaſe, in the hands of the ſaid *J.* and *M.* to be adminiſtered, in your bailiwic, you cauſe to be made the ſaid ſum of twenty-four pounds fourteen ſhillings of damages aforeſaid, if you can levy the ſame; and that you have the money thereupon levied before us at *Weſtminſter* on *Friday* next after the morrow of the *Holy Trinity*, to render to the ſaid *S.* for her damages aforeſaid; and if the ſaid ſum cannot be thereupon levied, then if it ſhall appear to you by inquiſition on the oath of good and lawful men of your bailiwic, in this behalf to be taken, or by any other methods whereby you may the better underſtand or certify, that the ſaid *J.* and *M.* his wife have ſold, eloined, waſted or converted, and diſpoſed to their own proper uſe, goods and chattels which were of the ſaid *W. B.* at the time of his deceaſe, in their hands to be adminiſtered, to the value of the ſaid twenty-four pounds fourteen ſhillings of the damages aforeſaid, or any part thereof, that then by good and lawful men of your bailiwic you make known to the ſaid *J.* and *M.* that they be before us at *Weſtminſter* on *Friday* next after the morrow of the *Holy Trinity*, to ſhew if any thing they have or know to ſay for themſelves, why the ſaid *S.* ought not to have her execution againſt them for the ſaid twenty-four pounds and

Fieri facias.

If no goods, and a devaſtavit ſhall appear on inquiſition, then ſci. fa. quare.

fourteen ſhillings for damages aforeſaid, to be levied of the proper goods and chattels of the ſaid *J.* and *M.* if it ſeem expedient, *&c.* and further to do and receive what our ſaid court before us ſhall thereof then and there conſider in this behalf: And have there then the names of thoſe by whom you ſhall make known to them, and this writ. Witneſs Sir *W. L.* knt. at *Weſtminſter*, the fifteenth day of *May* in the eleventh year of our reign.

At which day before our lord the king at *Weſtminſter* came the ſaid *S.* in her proper perſon; and the ſheriff, to wit, Sir *G. C.* knt. and *R. C.* eſq; returned the ſaid writ to him in form aforeſaid, directed in manner and form following, to wit, That the ſaid *J.* and *M.* had not any goods or chattels which were of the ſaid *W. B.* deceaſed, at the time of his death, in their hands to be adminiſtered, in his bailiwic, whereof he could cauſe the ſaid twenty four pounds fourteen ſhillings of damages aforeſaid, or any part thereof, to be made; and the ſaid ſheriff likewiſe returned a certain inquiſition taken at the *Three Tuns* in *Brook-ſtreet* near *Holborn* in the county of *Middleſex*, on the twenty-fifth day of *May* in the eleventh year of the reign of our ſovereign lord *George* the ſecond, now king of *Great Britain*, *&c.* before the ſaid ſheriff, by virtue of the ſaid writ to him thereupon directed, on the oath of twelve good and lawful men of his bailiwic; whereby it was found that ſeveral goods and chattels which were of the ſaid *W. B.* at the time of his death, had come to the hands and poſſeſſion of the ſaid *J.*

Nulla bona.

Inquiſition and devaſtavit found.

J. and *M.* to be adminiſtered, to the value of the ſaid twenty-four pounds and fourteen ſhillings of damages aforeſaid, which ſaid goods and chattels they had ſold, eloined, waſted, converted and diſpoſed to their own proper uſe: *And* the ſaid ſheriff likewiſe returned, that the ſaid *J.* and *M.* had not any thing in his bailiwic whereby or by which he could make known to them, *&c.* and that they or either of them were not found in the ſame, and they did not come, nor did either of them come: *Therefore*, as before, it is commanded to the ſheriff, that by good and lawful men of his bailiwic he make known to the ſaid *J.* and *M.* that they be before our lord the king at *Weſtminſter* on *Monday* next after fifteen days from the day of the *Holy Trinity*, to ſhew, if any thing they have or know to ſay for themſelves, why the ſaid *S.* ought not to have her execution againſt them of the ſaid twenty-four pounds fourteen ſhillings for her damages aforeſaid, to be levied of the proper goods and chattels of the ſaid *J.* and *M.* if, *&c.* and further, *&c.* The ſame day is given to the ſaid *S.* at the ſame place: At which day before our ſaid lord the king at *Weſtminſter* came the ſaid *S.* in her proper perſon; and the ſaid ſheriff as before returned, that the ſaid *J.* and *M.* had not any thing in his bailiwic, whereby or by which he could make known to them, and that they were not, nor was either of them found in the ſame, and the ſaid *J.* and *M.* although at that day ſolemnly demanded did not, nor did either of them

Nihil to the ſci. fa.

Alias ſci. fa. awarded.

Nihil.

Judgment. them come, but they made default. *It is* therefore conſidered that the ſaid *S.* have her execution againſt the ſaid *J.* and *M.* of the ſaid twenty-four pounds fourteen ſhillings for her damages aforeſaid, to be levied of the proper goods and chattels of the ſaid *J.* and *M.* by the default of the ſaid *J.* and *M.* *&c.*

B. R. Venire facias in ejectment by original for a trial at bar.

GEORGE the third, *&c.* To the ſheriff of *Buckinghamſhire*, greeting. We command you that you cauſe to come before us from the day of the *Holy Trinity* in three weeks, whereſoever we ſhall then be in *England*, twelve free and lawful men of your county, each of whom hath ten pound of lands, tenements or rents by the year at the leaſt, by whom the truth of the matter may be the better known, and who neither to *J. S.* the plaintiff, nor to *J. P.* late of *Catesby* in the county of *Northampton*, eſq; *T. S.* late of *Quainton* in the county of *Buckingham*, yeoman, *J. B.* late of *Quainton* aforeſaid, widow, *J. F.* late of *Quainton* aforeſaid, yeoman, *J. B.* late of *Quainton* aforeſaid, yeoman, *J. C.* late of *Quainton* aforeſaid, yeoman, *R. M.* late of *Quainton* aforeſaid, yeoman, *T. S.* late of *Quainton* aforeſaid, yeoman, *J. H.* late of *Quainton* aforeſaid, yeoman, *R. C.* late of *Quainton* aforeſaid, yeoman, Sir *J. F. A.* late of *Weſtminſter* in the county of *Middleſex*, knt. *T. S.* late of *Quainton* aforeſaid, yeoman, *R. W.* late of *Quainton* aforeſaid, yeoman, *J. S.* late of *Quainton* aforeſaid, yeoman, *M. G.* late of *Quainton* aforeſaid,

ſaid widow, *J. S.* late of *Quainton* aforeſaid, yeoman, *E. H.* late of *Quainton* aforeſaid, widow, *W. C.* late of *Quainton* aforeſaid, yeoman, *&c.* or *J. H.* late of *Quainton* aforeſaid, yeoman, defendants, are any ways related; to make a certain jury of the country between the parties aforeſaid, of a plea of treſpaſs and ejectment, becauſe as well the aforeſaid *J. S.* as the aforeſaid *J. P. T. S. J. B. &c.* and *J. H.* between whom the matter is in diſpute, have put themſelves upon that jury; and have you then there the names of the jurors and this writ. Witneſs Sir *W. L.* knt. at *Weſtminſter*, the ſecond day of *June* in the eleventh year of our reign.

Ventris.

B. R. Diſtringas in ejectment by original for a trial at bar.

GEORGE the ſecond, *&c.* To the ſheriff of *Buckinghamſhire*, greeting. We command you that you diſtrain Sir *C. T.* of *Thornton*, bart. Sir *F. D.* of *Weſt Wickham*, bart. *C. R.* of *Great Miſſenden*, eſq; *C. P.* of *Weſtbury*, eſq; and *J. H.* of *Great Marlow*, gent. being the jurors ſummoned in our court before us at *Weſtminſter*, between *J. S.* plaintiff, and *J. B.* late of *Cateſby* in the county of *Northampton*, eſq; *T. S.* late of *Quainton* in the county of *Buckingham*, yeoman, *J. B.* late of *Quainton* aforeſaid, widow, *&c.* and *J. H.* late of *Quainton* aforeſaid, yeoman, defendants, by all their lands and chattels in your bailiwic, ſo that neither they, nor any one of them, intermeddle therewith, until you ſhall have another precept from us, and that you anſwer to us out of the iſſues of the ſame,

ſame, ſo that you have their bodies before us on *Tueſday* next after the morrow of *St. Martin*, whereſoever we ſhall then be in *England*, to make a certain jury of the country between the parties aforeſaid of a plea of treſpaſs and ejectment, and to hear their judgment thereupon of many defaults; and have you then there the names of that jury and this writ. Witneſs Sir *W. L.* knt. at *Weſtminſter*, the * twenty-firſt day of *July* in the twelfth year of our reign.

Ventris.

Award of ca. fa.

And hereupon the ſaid *P.* comes before our lord the king at *Weſtminſter* in his proper perſon, and prays the king's writ of *capias ad ſatisfaciendum* againſt the ſaid *D.* to ſatisfy the ſaid *P.* for the debt and damages aforeſaid, to be directed to the ſheriff of the ſaid county of ———; and it is granted unto him; whereby the ſheriff of the ſaid county is commanded, that he take the ſaid *D.* if he is to be found in his bailiwic, and that he keep him ſafely, ſo that he have his body before our lord the king at *Weſtminſter* on ——— next after ——— to ſatisfy the ſaid *P.* for his debt and damages aforeſaid: The ſame day is given to the ſaid *P.* at the ſaid place: *At* which day before our lord the king at *Weſtminſter* the ſaid *P.* comes in his proper

Return non invent.

* *The* quarto die poſt *of the return of the* venire.

perſon:

perſon: And the ſheriff of the ſaid county, namely, ———, returns, that the ſaid *D.* is not found in his bailiwic: *Whereupon* the ſaid *P.* prays another writ of our ſaid lord the king to be directed to the ſheriff of the ſame county in manner aforeſaid; and it is likewiſe granted unto him; by which the ſheriff of the ſaid county is as before commanded, that he take the ſaid *D.* if he is to be found in his bailiwic, and that he keep him ſafely, ſo that he have his body before our lord the king at *Weſtminſter* on ——— next after ——— to ſatisfy the ſaid *P.* for the debt and damages aforeſaid: The ſame day is given to the ſaid *P.* at the ſame place: *At* which day before our lord the king at *Weſtminſter* the ſaid *P.* comes in his proper perſon; and the ſheriff of the ſaid county did not ſend back the ſaid writ, nor did he do any thing thereupon: Therefore the ſaid *P.* prays another writ, *&c.*

Award of alias ca. ſa.

Vic' non miſit breve.

Afterwards, that is to ſay, on ——— next after ——— [the teſte of the *elegit*] then next enſuing, before our lord the king at *Weſtminſter* the ſaid *P.* came by his attorney aforeſaid, and according to the form of the ſtatute in the like caſe made and provided, elected to be delivered to him all the goods and chattels of the ſaid *D.* except the oxen and beaſts of his plough, and alſo a moiety of all the lands and tenements of the ſaid *D.* of which the ſaid *D.* was ſeiſed on the —— next after ——— in the ——— year, *&c.* on which day the ſaid judgment was given,

Award of an elegit.

or

or at any time afterwards, to hold the ſaid goods and chattels as his own proper goods and chattels, and alſo to hold the ſaid moiety of all the ſaid lands and tenements as his freehold to him and his aſſigns, by a reaſonable price and extent, according to the form of the ſaid ſtatute, until he ſhall have fully levied thereof the ſaid debt and damages: And the ſaid *P.* prays a writ of our lord the king to be directed to the ſheriff of the ſaid county of ——— in manner aforeſaid; and it is granted to him returnable before our lord the king at *Weſtminſter* on ——— next after ———: The ſame day is given to the ſaid *P.* at the ſame place; At which day before our lord the king at *Weſtminſter* the ſaid *P.* came by his attorney aforeſaid; and the ſheriff of the ſaid county of ———, namely, *E. F.* eſq; by virtue of the ſaid writ to him directed, returned a certain inquiſition taken before him at —— in the county aforeſaid on —— the ——day of——in the——year, *&c.* by the oath of twelve honeſt and lawful men of his bailiwic, which ſaid inquiſition followeth in theſe words, to wit, [ſet forth the inquiſition *in hæc verba.*]

Outlawry reverſed.

London, *to wit.* *EXIGENT* againſt *T. D.* late of, *&c.* returnable from the day of *Eaſter* in fifteen days, whereſoever, *&c.* outlawed in *London*, on *Monday* next after the feaſt of *St. Mark* the evangeliſt in the —— year of the reign of, *&c.* at the ſuit of *H. H.* in a plea of treſpaſs on the caſe to the damage of the ſaid *H.* of one hundred pounds.

After-

Afterwards, to wit, of the term of ——— in the ——— year of the reign of, &c. the ſaid outlawry was reverſed for default of proclamation.

Examined by me *S. C.* the ——— day of ——— in the ——— year of the reign of, &c. by the record of the reverſal of the ſaid outlawry.

S. C. ſecondary.

Entry of a recognizance of bail after the declaration. 1 Vol.

And the ſaid *D.* by ——— his attorney, comes and defends the wrong and injury, when, &c. And hereupon *F. G.* of, &c. and *H. J.* of, &c. [the bail with their additions] come in their proper perſons before our lord the king at *Weſtminſter*, and become pledges and bail, and each of them becomes pledge and bail for the ſaid *D.* that if the ſaid *D.* ſhould happen to be convicted in the plea aforeſaid, then the ſaid *F.* and *H.* granted, and each of them for himſelf hath granted, that all ſuch damages, coſts and charges, as ſhould on this behalf be adjudged to the ſaid *P.* ſhould be taken and levied of their and each of their lands and chattels, to the uſe of the ſaid *P.* if the ſaid *D.* ſhould not happen to pay the ſaid damages to the ſaid *P.* nor render himſelf on that account to the priſon of the *Marſhalſea* of our lord the king before the king himſelf.

Ca. ſa. againſt an adminiſtrator for coſts on a non prof. B. R.

——— *To* the ſheriff of *M.* greeting. We command you that you take *A. B.* adminiſtrator of all and ſingular the goods and chattels which were of *E. F.* at the time of his

his death, who died inteſtate, as it is ſaid, if he ſhould be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us at *Weſtminſter* on —— next after —— to ſatisfy *C. D.* of ——which in our ſame court before us were adjudged to the ſaid *C.* according to the form of the ſtatute in ſuch caſe lately made and provided, for his coſts and charges ſuſtained by him about *(a)* his defence in a certain action of a plea of debt at the ſuit of the ſaid *A.* Whereupon the ſaid *A.* did not afterwards proſecute that action whereof he is convicted, as appears to us of record. And have there then this writ. Witneſs, *&c.*

The like on a non proſ. for not declaring.

(a) His defence in his appearance to our certain writ of *latitat* proſecuted againſt the ſaid *C.* at the ſuit of the ſaid *A.* And whereupon the ſaid *A.* did not afterwards further proſecute that writ, as appears, *&c.*

Ca. ſa. on a judgment in an inferior court removed by writ of error. Poſt ſci. fa. B. R.

—— *To* the ſheriff of *Devonſhire*, greeting. We command you that you take *W. G.* if he ſhall be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us on the octaves of *St. Hilary*, whereſoever we ſhall then be in *England*, to ſatisfy *W. D.* of five pounds three ſhillings and four-pence for his damages which he has ſuſtained, as well by the occaſion of the not performing certain promiſes and undertakings lately made by the ſaid *W. G.* to the ſaid *W. D.* as for his coſts and charges expended by him about his ſuit in this behalf; whereof

in

in our court before *J. A.* eſq; mayor of the borough of *Totneſs* in your county, the ſaid *W. G.* was convicted, as by the inſpection of the record and proceſs thereupon, which for certain cauſes we lately cauſed to come before us, as appears to us of record. And whereupon in our court before us it is conſidered, that the ſaid *W. D.* have execution thereof. And have there this writ. Witneſs, *&c.*

——— *To* the ſheriff of *Middleſex*, greeting. We command you that you take *A. B.* if he ſhall be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us from the day of *Eaſter* in one month, whereſoever we ſhall then be in *England*, to ſatisfy *C. D.* of twenty pounds for the arrears of a certain yearly rent of forty pounds due to the right hon. *T.* lord *L.* baron of *L.* for the half of one year, ended on the feaſt day of *St. Michael* in the ſeventeenth year of our reign; as alſo of———which in our ſame court before us were adjudged to the ſaid *C.* according to the form of the ſtatute in ſuch caſe lately made and provided, for his coſts and charges expended by him about his ſuit in this behalf, whereof he is convicted, as appears to us of record. And have there this writ. Witneſs, *&c.*

Ca. ſa. for a bailiff in replevin. B. R.

——— *To* the ſheriffs of *London*, greeting. *Whereas* we lately commanded our ſheriff of *Middleſex*, that he ſhould take *A. B.* [as before to] as appears to us of record. *And* our ſaid ſheriff of *Middleſex* at that day returned

Teſtatum ca. ſa. thereon.

to us, that the ſaid *A.* was not found in his bailiwic. Upon which on the behalf of the ſaid *C.* it is ſufficiently teſtified in our court before us, that the ſaid *A.* lurks and wanders in your bailiwic; *Therefore* we command you that you take him, if he ſhall be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us on —— wheresoever we ſhall then be in *England*, to ſatisfy the ſaid *C.* of the ſaid arrear of rent and coſts and charges in form aforeſaid adjudged. And have there this writ. Witneſs, *&c.*

Ca. ſa. in ejectment for a defendant after part levied by fi. fa. B. R.

—— *To* the ſheriffs of *London*, greeting. *Whereas* we lately commanded you, that of the goods and chattels of *J. S.* in your bailiwic, you ſhould cauſe to be made two hundred and twelve pounds, which were adjudged to Sir *W. C.* late of *Weſtminſter* in the county of *Middleſex*, bart. according to the form of the ſtatute thereupon lately made and provided, for his coſts and charges expended by him about his defence in a certain action of treſpaſs and ejectment of farm, at the ſuit of the ſaid *J.* whereof the ſaid *J.* is convicted, as appears to us of record; and that you ſhould have the money before us on the octaves of the purification of the Bleſſed *Mary* laſt paſt, wheresoever we ſhould then be in *England*, to render to the ſaid *W.* for his coſts and charges aforeſaid. *And* you at that day returned to us, that by virtue of our ſaid writ to you thereupon directed, you had cauſed to be made of the goods and chattels of

of the ſaid *J.* twenty-eight pounds two ſhillings, parcel of the ſaid coſts and charges; and that you had cauſed the money to be delivered to the ſaid *W.* in part in ſatisfaction of ſo much of the ſaid coſts and charges; and ſo you could not have the money before us ready at the day and place in the ſaid writ mentioned; and that the ſaid *J.* had no other or more goods or chattels in you bailiwic, whereof you could cauſe to be made the ſaid reſidue of the ſaid coſts and charges, according to the command of the ſaid writ. *Therefore* we command you that you take the ſaid *J* if he ſhall be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us from the day of *Eaſter* in fifteen days whereſoever we ſhall then be in *England*, to ſatisfy the ſaid *W.* of one hundred eighty-ſeven pounds eighteen ſhillings, reſidue of the ſaid coſts and charges, in form aforeſaid adjudged. And have there this writ. Witneſs, *&c.*

—— *To* the ſheriff of *M.* greeting. We command you that you take *A. B.* if he ſhall be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us at *Weſtminſter* on——next after——to ſatisfy *C. D.* according to the form of the ſtatute in ſuch caſe lately made and provided, of —— adjudged to the ſaid *C.* for his coſts and charges about his defence in a certain action in our court before us, againſt the ſaid *C.* at the ſuit of the ſaid *A.* of a plea of treſpaſs upon the caſe. Whereupon the ſaid *A.* did

Ca. ſa. on a nonſuit for not declaring. B. R.

not afterwards proſecute the ſaid writ within two terms; and whereof the ſaid *A.* is convicted, as appears to us of record. And have there then this writ. Witneſs, *&c.*

Tantum ca. ſa. in debt for reſidue, after part levied by fi. fa. B. R.

——— *To* the ſheriff of *Wiltſhire*, greeting. *Whereas* by our writ we lately commanded *N. P.* eſq; late ſheriff of your county, that of the goods and chattels of *J. T.* otherwiſe called, *&c.* in his bailiwic, he ſhould cauſe to be made eight pounds of debt which *J. J.* lately in our court before us at *Weſtminſter* had recovered againſt him, as alſo twenty-three ſhillings and four-pence, which in our ſame court before us were adjudged to the ſaid *J. J.* for his damages which he had ſuſtained, as well by the occaſion of the detaining that debt, as for his coſts and charges expended by him about his ſuit in this behalf, whereof he is convicted, as appears to us of record: And that he ſhould have that money before us at *Weſtminſter* on ——— next after ——— laſt paſt, to render to the ſaid *J. J.* for the debt and damages aforeſaid. *And* our ſaid late ſheriff of your county at that day returned to us, that he, by virtue of the ſaid writ to him directed, had cauſed to be made of the goods and chattels of the ſaid *J. T.* two pounds nine ſhillings and eight-pence, parcel of the ſaid debt and damages, which ſaid money he had cauſed to be paid to the ſaid *J. J.* in part of the debt and damages aforeſaid: And the ſame ſheriff further certified, that the ſaid *J. T.* had no other or more goods or chattels within his bailiwic, whereof he could

Recital of fi. fa.

and return.

cauſe

cauſe to be made the reſidue of the ſaid debt and damages or any parcel thereof. *And whereas* by our writ we lately commanded our ſheriffs of *London*, that they ſhould take the ſaid *J. T.* if he ſhould be found in their bailiwic, and ſafely keep him, ſo that they might have his body before us at *Weſtminſter* on *Wedneſday* next after fifteen days of *St. Martin*, to ſatisfy the ſaid *J. J.* of ſix pounds thirteen ſhillings and eight-pence, reſidue of the ſaid debt and damages, in form aforeſaid recovered. *And* our ſaid ſheriffs of *London* at that day returned to us, that the ſaid *J. T.* was not found in their bailiwic. *Whereupon* on the behalf of the ſaid *J. J.* it is ſufficiently teſtified in our court before us, that the ſaid *J. T.* lurks and wanders in your county. *Therefore* we command you that you take the ſaid *J. T.* if he ſhall be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us at *Weſtminſter* on *Tueſday* next after the octaves of the purification of the Bleſſed *Mary*, to ſatisfy the ſaid *J. J.* of the ſaid ſix pounds thirteen ſhillings and eight-pence, reſidue of the ſaid debt and damages. And have there then this writ. Witneſs, *&c.*

Recital of firſt ca. ſa.

and return.

Teſtatum.

——— *To* the ſheriff of *Cornwall*, greeting. *Whereas* by our writ we lately commanded you, that of the goods and chattels of *W. O.* gent. one of the attornies of our court before us, being otherwiſe called *W. O.* of *Launceſton* in the county of *Cornwall*, gent. deceaſed,

Ca. ſa. in debt againſt an executrix after a devaſtavit returned on a fi. fa. B. R.

deceaſed, in the hands of *E. T.* widow, executrix of the teſtament and laſt will of the ſaid *W. O.* to be adminiſtered in your bailiwic, you ſhould cauſe to be made ſeventy pounds, which *E. D.* gent. lately in our court before us recovered againſt the ſaid *W.* in his lifetime, of debt, alſo four pounds ten ſhillings which in our ſame court before us were adjudged to the ſaid *E. D.* for his damages which he ſuſtained, as well by occaſion of the detaining that debt, as for his coſts and charges expended by him about his ſuit in this behalf, whereof he is convicted, as appears to us of record, if ſhe had ſo much in her hands, then the ſaid damages of the proper goods and chattels of the ſaid *E. T.* And that you ſhould have that money before us at *Weſtminſter*, on *Saturday* next after the morrow of *St. Martin* laſt paſt, to render to the the ſaid *E. D.* for the debt and damages aforeſaid.

Return. *And* you at that day returned to us, that the ſaid *E.* had ſold and waſted divers goods and chattels which were of the ſaid *W.* at the time of his death, to the value of the debt and damages aforeſaid; and had converted and diſpoſed to her own uſe the money coming therefrom, ſo that you could not cauſe to be levied or made the ſaid debt and damages of the goods and chattels of the ſaid *W. G.* And you further certified to us, that the ſaid *E.* had no goods or chattels in your bailiwic, whereof you could cauſe the ſaid damages to be made. *Therefore* we command you,

you, that you take the ſaid *E. T.* if he ſhall be found in your bailiwic, and ſafely keep her, ſo that you may have her body before us at *Weſtminſter* on —— next after ——, to ſatisfy the ſaid *E.* of the ſaid debt and damages, in form aforeſaid And have there then this writ. Witneſs, *&c.*

Ca. ſa. againſt an adminiſtratrix in debt after a devaſtavit returned on a fi. fa. of parcel of the debt. B. R.

—— *To* the ſheriff of *Devonſhire*, greeting. *Whereas* by our writ we lately commanded our ſheriff of *Devonſhire* aforeſaid, your predeceſſor, that of the goods and chattels of *C. S.* deceaſed, otherwiſe called, *&c.* at the time of his death, in the hands and cuſtody of *E. S.* widow, adminiſtratrix, *&c.* in your bailiwic, he ſhould cauſe to be made one hundred and twenty pounds of debt, alſo eleven pounds for his damages which *J. S.* executor, *&c.* ſuſtained, as well by the occaſion of the detaining that debt, as for his coſts and charges expended by him about his ſuit in this behalf, whereof —— is convicted, as appears to us of record, if ſhe had ſo much in her hands, and if ſhe had not ſo much in her hands, then the ſaid damages of the proper goods and chattels of the ſaid *E.* that he ſhould have that money before us at *Weſtminſter* at a certain day now paſt, to render to the ſaid *J. S.* executor, for the debt and damages aforeſaid. *And* our ſaid ſheriff of *Devonſhire* at that day returned to us amongſt other things, that divers goods and chattels which were of the ſaid *C. S.* at the time of his death, to the value of eighty-four pounds, parcel of the ſaid debt, after the death of the

ſaid *C.* and before the coming of that writ to him directed, had come to the hands of the ſaid *E.* to be adminiſtered, which ſaid goods and chattels the ſaid *E.* before the coming of the ſaid writ ſo to him directed, had waſted and converted and diſpoſed to her own uſe, ſo that he could in no manner cauſe to be made the ſaid one hundred and twenty pounds, or any parcel thereof, of the ſaid goods and chattels: And he further certified to us, that the ſaid *E.* has no goods or chattels in his bailiwic, whereof he could in any manner cauſe to be made the ſaid eleven pounds of damages aforeſaid, or any parcel thereof. *Therefore* we command you, that you take the ſaid *E.* if ſhe ſhall be found in your bailiwic, and ſafely keep her ſo that you may have her body before us at *Weſtminſter* on —— next after ——, to ſatisfy the ſaid *J. S.* the ſaid eighty-four pounds, parcel of the ſaid debt, in form aforeſaid. And have there then this writ. Witneſs, *&c.*

Teſtatum ca. ſa. againſt the plaintiff after a verdict in replevin. B. R.

—— *To* the ſheriff of *Warwickſhire*, greeting. *Whereas* we lately commanded our ſheriffs of the city of *Coventry*, that they ſhould take *M.* lady *D.* widow, if ſhe ſhould be found in their bailiwic, and ſafely keep her, ſo that they might have her body before us at a certain day now paſt, whereſoever we ſhould then be in *England*, to ſatisfy *R. E.* of nine pounds which in our court before us were adjudged to the ſaid *R.* according to the form of the ſtatute in ſuch caſe lately made and provided, for his damages which he ſuſtained,

ſuſtained, as well by the occaſion that the ſaid *M.* in our ſaid court before us unjuſtly proſecured a certain plaint of a plea of taking and unjuſtly detaining of cattle againſt the ſaid *R.* as by a certain jury of the country in that behalf was lately found, as for his coſts and charges expended by him about his ſuit in this behalf, whereof ſhe is convicted, as appears to us of record. *And* our ſaid ſheriffs of the city of *Coventry* at that day returned to us, that the ſaid *M.* was not found in their bailiwic: *Upon which*, on the behalf of the ſaid *R.* it is ſufficiently teſtified in our court before us, that the ſaid *M.* lurks and wanders in your county. *Therefore* we command you, that you take the ſaid *M.* if ſhe ſhall be found in your bailiwic, and ſafely keep her, ſo that you may have her body before us from the day of *Eaſter* in fifteen days, whereſoever we ſhall then be in *England*, to ſatisfy the ſaid *R.* of the damages, coſts and charges aforeſaid. And have there this writ. Witneſs, *&c.*

Teſtatum ca. ſa. againſt one bail in caſe. B. R.

——— *To* the ſheriff of *Leiceſterſhire*, greeting. *Whereas* we lately commanded our ſheriff of *Middleſex*, that he ſhould take *H. D.* of *Lutterſworth* in your county, gent. bail of *E. D.* if he ſhould be found in his bailiwic, and ſafely keep him, ſo that he might have his body at *Weſtminſter* on *Wedneſday* next after the morrow of *St. Martin*, to ſatisfy *M. E.* of thirty pounds, for his damages

mages which he ſuſtained, as well by the occaſion of the not performing certain promiſes and undertakings lately made by the ſaid *F.* to the ſaid *M.* as for his coſts and charges expended by him about his ſuit in this behalf, whereof the ſaid *F.* is convicted, as appears to us of record. *And whereupon* in our ſame court before us it is conſidered, that the ſaid *M.* have his execution againſt the ſaid *H.* of the damages aforeſaid, according to the force, form and effect of a certain recognizance by the ſaid *H.* in our court before us thereupon lately acknowledged to the ſaid *M.* as alſo appears to us of record. *And* our ſaid ſheriff of *Middleſex* at that day returned to us, that the ſaid *H.* was not found in his bailiwic: *Whereupon* on the behalf of the ſaid *M.* it is ſufficiently teſtified in our court before us, that the ſaid *H.* lurks and wanders in your county. *Therefore* we command you, that you take the ſaid *H.* if he ſhall be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us at *Weſtminſter* on —— next after ——, to ſatisfy the ſaid *M.* of the damages aforeſaid. And have there then this writ. Witneſs, *&c.*

m ca. ebt coſts fter t.

—— *To* the ſheriff of *Eſſex*, greeting. *Whereas* we lately commanded our ſheriff of *Middleſex*, that he ſhould take *A. B.* if he ſhould be found in his bailiwic, and ſafely keep him, ſo that he might have his body before us on the octaves of *St. Hilary* wherefoever we ſhould then be in *England*, to ſatisfy

fy *C. D.* of one hundred pounds of debt, which the ſaid *C.* lately, in our court before our juſtices of the bench at *Weſtminſter*, recovered againſt him, and of ſixty-three ſhillings which in our ſame court of the bench were adjudged to the ſaid *C.* for the damages which he ſuſtained by the occaſion of the detaining of that debt; and alſo of ten pounds by our court before us adjudged to the ſaid *C.* according to the form of the ſtatute in ſuch caſe lately made and provided, for his damages, coſts and charges which he had by the occaſion of the delaying of the execution of the ſaid debt and damages, by the pretext of the proſecution of our certain writ of error by the ſaid *A.* proſecuted in our ſaid court before us, of and upon the premiſſes, whereof he is convicted, as by the inſpection of the record and proceſs thereupon, which for certain cauſes we cauſed to come before us, appears to us of record. *And* whereupon in our ſame court before us it is conſidered, that the ſaid *C.* have thereupon his execution againſt the ſaid *A.* of the debt, damages, coſts and charges aforeſaid. *And* our ſaid ſheriff of *Middleſex* at that day returned to us, that the ſaid *A.* was not found in his bailiwic: *Upon which* on the behalf of the ſaid *C.* it is ſufficiently teſtified in our ſaid court before us, that the ſaid *A.* lurks and wanders in your county. *Therefore* we command you, that you take him, if he ſhall be found in your bailiwic, and ſafely keep him, ſo that you may have his body before us from ———, whereſoever we ſhall then be in *England*, to ſatisfy the ſaid *C.* of the

the debt, damages, coſts and charges aforeſaid. And have there then this writ. Witneſs, *&c.*

Ca. ſa. againſt an executrix by ſurviving executors. B.R. Recital of fi. fa.

——— *To* the ſheriff of *Cornwall*, greeting. *Whereas* by our writ we lately commanded you, that of the goods and chattels which were of *W. D.* gent. deceaſed, lately called *W. D.* of, *&c.* at the time of his death in the hands of *C. D.* widow, executrix of the teſtament and laſt will of the ſaid *W. D.* in your bailiwic, you ſhall cauſe to be made two hundred pounds of debt, which *W. P. R. T.* clerk, and *J. H.* profeſſor of divinity, ſurviving executors of the teſtament and laſt will of *A. P.* gent. deceaſed, lately in the court of the lord *William* the third, late king of *England*, *&c.* before the ſaid late king at *Weſtminſter* recovered againſt the ſaid *C.* as alſo thirty-ſix ſhillings, which in the ſame court of the ſaid lord the late king, before the king himſelf, were adjudged to the ſame *W. P. T. P. R. T.* and *J. H.* for their damages which they had ſuſtained, as well by the occaſion of the detaining of that debt, as for their coſts and charges expended by them about their ſuit in that behalf, whereof ſhe was convicted, as appeared to us of record, if ſhe had ſo much in her hands, and if ſhe had not ſo much in her hands, then the ſaid damages of the proper goods and chattels of

Firſt ſci. fa.

the ſaid *C.* *And* whereupon it was conſidered in our court before us, that the ſaid *W. P. T. P.* and *J. H.* the ſurviving executors of the ſaid *A.* ſhould have their execution againſt the

the ſaid *C.* of the debt and damages aforeſaid, to be levied of the goods and chattels which were of the ſaid *W. D.* in the hands of the ſaid *C.* to be adminiſtered, if ſhe then had ſo much in her hands; if ſhe then had not ſo much in her hands, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *C.* And that you ſhould have that money before us at *Weſtminſter* on *Wedneſday* next after five weeks of *Eaſter*, to render to the ſaid *W. P. T. P.* and *J. H.* for the debt and damages aforeſaid. *And* you the ſheriff of *Cornwall* aforeſaid, at that day returned to us, that the ſaid *C.* had no goods or chattels in your bailiwic which were of the ſaid *W. D.* at the time of his death in her hands to be adminiſtered, whereof you could cauſe to be made the debt or damages aforeſaid, or any part thereof; nor had the ſaid *C.* any her own proper goods or chattels in your bailiwic, whereof you could cauſe to be made the damages aforeſaid, or any part thereof, according to the command of the ſaid writ. *And whereas* thereupon in our court before us afterwards it was in ſuch ſort proceeded, that by our ſaid court before us it was conſidered, that the ſaid *W. P. T. P.* and *J. H.* the ſurviving executors of the ſaid *A.* ſhould have execution againſt the ſaid *C.* of the ſaid two hundred pounds of debt, as alſo the ſaid thirty-ſix ſhillings for the damages, coſts and charges aforeſaid, to be levied of the proper goods and chattels of the ſaid *C.* And it was further conſidered by our ſame court before us, that the ſaid *W. P. T. P.* and *J. H.* ſhould recover

Return nulla bona.

Judgment de bona proprius.

cover againſt the ſaid *C.* twenty-eight pounds for their coſts and charges expended by them about their ſuit, by occaſion of the proſecuting our writ of *ſcire facias* in that behalf by our ſame court before us adjudged to the ſaid *W. T.* and *J.* at their requeſt, according to the form of the ſtatute in ſuch caſe thereupon lately made and provided. *Therefore* we command you, that you take the ſaid *C.* if ſhe ſhall be found in your bailiwic, and ſafely keep her, ſo that you may have her body before us at *Weſtminſter* on —— next after —— to ſatisfy the ſaid *W. P. T. P.* and *J. H.* of the ſaid two hundred pounds of debt, and the ſaid thirty-ſix ſhillings for their coſts and charges aforeſaid, as of the ſaid twenty-eight pounds for the ſaid coſts and charges adjudged as aforeſaid to the ſaid *W. T.* and *J.* according to the form of the ſaid ſtatute. And have there then this writ. Witneſs, *&c.*

Ca. ad reſtituend. a judgment in an inferior court being reverſed on a writ of error. B. R.

Whereas J. C. lately in our court before the mayor of our borough of *P.* by the judgment of the ſame court, without our writ, according to the cuſtom of the ſaid borough, recovered againſt *A. J.* thirty pounds for his damages which he had ſuſtained, as well by occaſion, *&c.* [as in *ca. ſa.*] whereof he was convicted, as appears to us by inſpection of the record and proceſs which we lately cauſed to come before us, for the cauſe of correcting error in the ſame, and which are now remaining before us; which ſaid record and proceſs being viewed and diligently examined, and fully

fully underſtood by our court before us, we, or divers errors found in the ſaid record and proceſs, have revoked and intirely annulled the ſaid judgment; and we have further conſidered, that the ſaid *A. J.* be reſtored to all things which he has loſt by occaſion of the ſaid judgment; and now on the behalf of the ſaid *A. J.* in our court before us we have been informed, that the ſaid thirty pounds damages aforeſaid have been levied by pretext of the ſaid judgment before given and delivered to the ſaid *J. C.* *Therefore* we command you, that if it ſhall appear to you, that the ſaid *J. C.* has had execution of the ſaid thirty pounds for the damages aforeſaid, by virtue of the ſaid judgment, then without delay cauſe the ſaid *A. J.* to have full reſtitution of the ſaid thirty pounds; and if you ſhall not be able to make reſtitution thereof to the ſaid *A. J.* in form aforeſaid, then take the ſaid *J. C.* if, *&c.* whereſoever, *&c.* to ſatisfy the ſaid *A. J.* for the ſaid damages before had and received by the ſaid *J. C.* by pretext of the ſaid judgment. And have there this writ. Witneſs, *&c.*

Cap. in Withernam, upon a return habend. after a plea of property in a ſtranger. B. R.

——— *To* the ſheriff of ——, greeting. *Whereas T. B.* late of, *&c.* lately in our court before us, was ſummoned to anſwer *M.* lady *D.* widow, of a plea wherefore at the city of *Coventry*, in the county of the ſame city, in the king's highway there he took the cattle, to wit, five oxen and one heifer, of the ſaid *M.* and unjuſtly detained them againſt gages and pledges: And the ſaid

ſaid *T.* came into our ſaid court, alledging and ſaying, that at the time the ſaid cattle are ſuppoſed to have been taken, the property of the ſaid cattle was in one *R. C.* widow, adminiſtratrix of all and ſingular the goods and chattels, rights and credits which were of *W. C.* her ſaid huſband deceaſed, at the time of his death, praying a return of the ſaid cattle to be adjudged to him. And afterwards by a certain jury of the country, upon which as well the ſaid *M.* as the ſaid *T.* had thereupon put themſelves on the —— day of —— in the —— year of our reign at —— in the county of——before Sir *R. A.* knight of the bath, one of our juſtices of the bench, and *G. D.* eſq; for that turn aſſociated to the ſaid Sir *R. A.* and *V. B.* eſq; one of the barons of our exchequer, the preſence of the ſaid *V. B.* not being expected, by virtue of a writ of *ſi non omnes, &c.* our juſtices aſſigned to take the aſſiſes in the county of ——— aforeſaid, by form of the ſtatute in ſuch caſe made and provided, taken by pretext of our writ of *niſi prius*, it is found that at the time the ſaid cattle are ſuppoſed to be taken, the property of the ſaid cattle was in the ſaid *R. C.* as the ſaid *T.* alledged; by which in our court before us it was conſidered, that the ſaid *M.* ſhould take nothing by her ſaid writ, but that ſhe and her pledges for proſecuting ſhould be in mercy for her falſe clamour thereupon. And that the ſaid *T.* ſhould thereupon go without day, and have a return of the ſaid cattle irreplegiable for ever. *By which* by our writ we lately commanded you, that without

out delay you ſhould cauſe the ſaid *T.* to have return of the ſaid cattle irreplegiable in form aforeſaid; and that you ſhould make known to us on ——, whereſoever we ſhould then be in *England*, in what manner you ſhould have executed that writ. *And* you at that day returned to us, that before the coming of that writ, the ſaid oxen and heifer were eloined to places unknown to you, whereby you was not able to return the ſaid oxen and heifer to the ſaid *T.* as you was commanded by the ſaid writ. *Therefore* we command you, that you take in *Withernam* of the cattle of the ſaid *M.* to the value of the oxen and heifer before taken, and cauſe them to be delivered to the ſaid *T.* to be detained by him until you can cauſe the oxen and heifer before taken to be returned. *And* that you put by gages and ſafe pledges the ſaid *M.* that ſhe be before us on ——, whereſoever we ſhall then be in *England*, to anſwer as well to us of the contempt, as to the ſaid *T.* of the damages and injury done to him in this behalf. And have there this writ. Witneſs, *&c.*

——*To* our truſty and well beloved Sir *T. J.* knt. our chief juſtice of the bench, greeting. *Whereas* we lately on the complaint of *T. D.* have been informed, that in the record and proceſs, and alſo in giving of judgment in a plaint which was in our court before Sir *F. N.* knt. and his companions then our juſtices of the bench, by our writ between *T. C.* gent. and *T. D.* eſq; for that the ſaid

Certiorari to the chief juſtice C. B. to certify the admiſſion of an infant to ſue by guardian. B. R.

T. C. and *T. D.* jointly held one meſſuage, ſixty acres of land, ten acres of meadow and forty acres of paſture, with the appurtenances, in *P.* and *R.* within the pariſh of *L.* in the county of *C.* the ſaid *T. D.* denied to make partition thereof between them, according to the form of the ſtatute in ſuch caſe made and provided, and unjuſtly and againſt the form of the ſaid ſtatute, did not permit the ſame to be done, as it is ſaid, manifeſt error hath intervened, to the great damage of the ſaid *T. D.* of which ſaid judgment we cauſed the record and proceſs thereupon, for the ſake of correcting errors in the ſame, to come before us. And it appears to us of record, and the ſaid *T. D.* appearing in our ſame court before us, ſaid, that where it appears by the ſaid record ſent to us that the ſaid *T. D.* in the term of the *Holy Trinity* in the thirty-ſecond year of our reign, came by *J. C.* gent. then his guardian in the ſaid plea, and pleaded in the form ſpecified in the ſaid record; yet there is not any record of the admiſſion of the ſaid *J. C.* to appear and defend for the ſaid *T. D.* then being an infant, in form aforeſaid, as guardian of the ſaid *T. D.* at the ſuit of the ſaid *T. C.* in the plea aforeſaid, remaining affiled in the ſaid court of *Common Bench* of the ſaid term, to warrant the ſaid *J. C.* to be guardian for the ſaid *T. D.* at the ſuit of the ſaid *T. C.* in the plea aforeſaid. *And* the ſaid *T. D.* has prayed our writ to be directed to you, to certify to us the truth thereof more fully, which was granted him. *And therefore* we command you to ſearch the rolls and other

other memorandums of the admiſſion of infants to proſecute and defend by their guardians in the ſaid county of *Cornwall*, of the ſaid term of the *Holy Trinity* in the thirty-ſecond year of our reign, remaining of record in your cuſtody; and that you certify to us forthwith what you ſhall thereupon find in the ſame, as fully and intirely as it remains before you of record, together with this writ. Witneſs, *&c.*

Habere facias poſſeſſionem. B. R.

——— *To* the ſheriff of *S.* greeting. *Whereas T. W.* lately in our court before us at *Weſtminſter*, by bill, without our writ, and by the judgment of the ſame court, recovered againſt *J. W.* his term yet to come, of and in one meſſuage, one garden, *&c.* with the appurtenances, ſituate, lying and being in *P.* in your younty, which *W. M.* on the firſt day of *October* in the eighth year of our reign demiſed to the ſaid *T.* for a term of years not yet expired, to wit, from the twenty-eighth day of *September* then laſt paſt to the full end and term of five years thence next enſuing, and fully to be complete and ended. By virtue of which demiſe, the ſame *T.* entered upon the ſame tenements, with the appurtenances, and was therefore poſſeſſed until the ſaid *J.* afterwards, to wit, on the ſame firſt day of *October* in the eighth year aforeſaid, with force and arms entered into the ſaid tenements, with the appurtenances, and him the ſaid *T.* from his farm aforeſaid, the ſaid term then and there not being expired, ejected, drove out and amoved, and him the ſaid *T.*

hath with-held from his poſſeſſion thereof, and ſtill doth with-hold, whereof the ſaid *J.* is convicted, as appears to us of record. *Therefore* we command you, that without delay you cauſe the ſaid *T.* to have his poſſeſſion of his term aforeſaid yet to come, of and in the tenements aforeſaid, with the appurtenances; and in what manner you ſhall have executed this writ, do you make appear to us at *Weſtminſter* on —— next after ——. And have you then there this writ. Witneſs, *&c.*

Habere facias poſſeſſionem on a double demiſe. B. R.

——— *To* the ſheriff of *Kent*, greeting. *Whereas C.G.* gent. lately in our court before us, recovered againſt *O. B.* his term yet to come, of and in fourteen acres of land, ſeven acres of meadow and ſeven acres of paſture, with the appurtenances, ſituate, lying and being in *D.* in your county, which Sir *J. E.* bart. and *M. E.* widow, on the twentieth day of *September* in the ſixth year of our reign demiſed to the ſaid *C.* for a term of years which is not yet paſt, to wit, from the twenty-fourth day of *June* laſt paſt until the full end and term of ſeven years thence next following, and fully to be complete and ended. By virtue of which ſaid demiſe, the ſaid *C.* entered into the ſaid tenements, with the appurtenances, and was poſſeſſed thereof until the ſaid *O.* afterwards, to wit, on the ſame twentieth day of *September* in the ſixth year aforeſaid, with force and arms, *&c.* entered into the tenements aforeſaid, in and upon the poſſeſſion of the ſaid *C.* thereof, and ejected, expelled and amoved the ſaid *C.* from his

his ſaid farm (his ſaid term therein being not then nor yet ended) and held out and yet holds out the ſaid *C.* from his poſſeſſion thereof; alſo his other term yet to come of and in three meſſuages, three gardens, nine other acres of land, ſeven other acres of meadow, and ſeven other acres of paſture, with the appurtenances, ſituate, lying and being in *D.* aforeſaid in your county, which the ſaid Sir *J. E.* bart. on the firſt day of *October* in the ſixth year aforeſaid, demiſed to the ſaid *C.* for a term of years which is not yet paſt, to wit, from the twenty-fourth day of *June* laſt paſt unto the full end and term of other ſeven years thence next following, and fully to be compleat and ended. By virtue of which ſaid demiſe laſt mentioned, the ſaid *C.* entered into the ſaid tenements laſt mentioned, with the appurtenances, and was poſſeſſed thereof until the ſaid *O.* afterwards, to wit, on the ſame day of *October* in the ſixth year aforeſaid, with force and arms, *&c.* entered into the ſaid tenements laſt mentioned, with the appurtenances, in and upon the poſſeſſion of the ſaid *C.* thereof, and ejected, expelled and amoved the ſaid *C.* from his ſaid farm laſt mentioned (his ſaid farm therein then and yet being not ended) and held out, and ſtill holds out the ſaid *C.* from his poſſeſſion thereof, whereof he is convicted, as appears to us of record. *Therefore* we command you, that without delay you cauſe the ſaid *C.* to have his poſſeſſion of his ſaid terms yet to come of the ſaid fourteen acres of land, ſeven acres of meadow and ſeven acres of paſture, with the

appurtenances firſt above mentioned; alſo of the ſaid three meſſuages, three gardens, nine other acres of land, ſeven other acres of meadow, and ſeven other acres of paſture, with the appurtenances laſt mentioned; and make appear to us at *Weſtminſter* on, *&c.* in what manner you ſhall execute this our writ. And have there this writ. Witneſs, *&c.*

Award of a mittimus to the juſtices in the county palatine of Lancaſter to try an iſſue joined in B. R.

And the ſaid *P.* likewiſe, *&c.* *Therefore* let there be a jury thereof made. *And becauſe* the iſſue aforeſaid between the parties aforeſaid above joined, ought to be tried by men of the ſaid county palatine of *Lancaſter*, that is to ſay, of the body of the ſaid county, where his ſaid majeſty's writ doth not run, and not elſewhere. *Therefore* to trying the iſſue aforeſaid, between the parties aforeſaid above joined, let the record of the plaint aforeſaid be ſent to his ſaid majeſty's juſtices there, ſo that the ſame juſtices, by his majeſty's writ of the county, do command the ſheriff of the ſame county that he cauſe twelve free and lawful men of the body of the ſaid county of *Lancaſter* to come before the ſaid juſtices at their next ſeſſion of aſſiſes, there before them to be holden, each of whom ſhall have 10 *l.* a year at the leaſt of lands, tenements or rents, by whom the truth of the matter may be the better known and inquired into, and who are in no wiſe related either to the ſaid *P.* or to the ſaid *D.* to recognize the truth of the matter in iſſue between the parties aforeſaid; becauſe as well the ſaid *D.* as the ſaid *P.* between whom the controverſy is, have

have put themſelves upon that jury; and when the verification and iſſue aforeſaid ſhall be there made and tried, then the ſaid juſtices ſhall ſend the record of the ſaid plaint, together with every thing that ſhall be done thereupon in his ſaid majeſty's court there, to our ſaid lord the king at *Weſtminſter*, at a certain day, which the ſame juſtices of the ſaid county palatine ſhall appoint to the ſaid parties, to be in the ſame court then to hear judgment thereupon, *&c.*

Mittimus to the juſtices of the county palatine of Lancaſter, to try an iſſue joined in B. R.

——— *To* our juſtices of our county palatine of *Lancaſter*, greeting. The tenor of a certain record before us at *Weſtminſter*, between *A. B.* plaintiff and *C. D.* defendant, in a plea of treſpaſs we ſend you incloſed herein, commanding that you (having inſpected the ſame) by your writ of our ſaid county palatine, do command the ſheriff of the ſame county, that he cauſe twelve free and lawful men of the body of the ſaid county palatine to come before you at your next ſeſſion after this writ ſhall be delivered to you, each of whom to have 10*l.* a year at the leaſt of lands, tenements or rents, by whom the truth of the matter may the better be known and inquired into, and who are in no wiſe related either to the ſaid *A.* or to the ſaid *C.* to recognize and make a certain jury of the county between the ſaid parties in the plea aforeſaid; becauſe as well the ſaid *C.* as the ſaid *A.* between whom the controverſy is, have put themſelves upon that jury; and alſo that you make ſuch further proceſs againſt the

ſaid jury ſo to be impanelled between the ſaid parties, as are in this behalf uſed and commonly made, according to the law and cuſtom of the ſaid county, until the iſſue aforeſaid between the ſaid parties ſhall be fully tried; and when the verification and iſſue aforeſaid ſhall be there made and tried before you, then do you ſend the record of the plaint aforeſaid, together with every thing that ſhall then and there be done before you therein, and alſo this writ, to us at *Weſtminſter*, at a certain day which you ſhall appoint to the ſaid parties, to be there to hear judgment thereupon. Witneſs, *&c.*

Wyrley.

On a writ of partition.

Paſch. 25 *Car.* 2. *Ann. Dom.* 1673. *ro.* 390.

Entry of a writ of mittimus, of a writ of dedimus poteſtatem, to admit a guardian of one of the defendants, being an infant, and the return, &c.

THE lord the king ſent to his juſtices of the bench here his writ of *mittimus* cloſe, together with the tenor of a certain writ of *dedimus poteſtatem* of and for the admiſſion of a guardian or guardians of *R. C.* eſq; being within age, and the return of the ſame writ, and alſo the admiſſion of a guardian thereupon received, in theſe words; *Charles the ſecond, &c.* To his juſtices of the bench, greeting. The tenor of our certain writ of *dedimus poteſtatem* directed to our beloved and truſty Sir *R. P.* knt. and to our beloved *R. F.* eſq; *T. D.* gent. *G. F.* gent. *R. C.* gent. *M. S.* gent. and *J. W.* gent. of and for the admiſſion of a

Writ of mittimus.

guardian

guardian or guardians of *R. C.* eſq; being within age, to proſecute and defend a plaint which is before you, by our writ, between *R. B.* eſq; *A. M.* eſq; and *R. C* gent. and the ſaid *R.* and *I. C.* ſpinſter, for that the ſaid *R. A.* and *R.* and the ſaid *R.* and *I.* together and for undivided hold the manors of *Bettons* and *Milkwell*, with the appurtenances, and eight meſſuages, five cottages, ten gardens, ten orchards, one hundred acres of land, fifty acres of meadow, three hundred and forty acres of paſture, and eight acres of wood, with the appurtenances in *Camberwell* and *Lambeth* in the county of *Surry*, the ſame *R.* and *I.* partition thereof between them, according to the form of the ſtatute in ſuch caſe made and provided to be made, refuſe, and unjuſtly, and contrary to the form of the ſaid ſtatute, do not permit the ſame to be done, as it is ſaid, and of the return or indorſement of the ſame writ, and alſo of a certain ſchedule annexed to the ſame writ ſent to us in our *Chancery*, and remaining on the files of our ſame *Chancery*, we ſend to you incloſed in theſe preſents, commanding, that, inſpecting the ſaid tenors, you cauſe further to be done for the admiſſion of the ſaid guardian or guardians, according to the law and cuſtom of our kingdom of *England*. Witneſs Ourſelf at *Weſtminſter*, the thirtieth day of *April* in the twenty-fifth year of our reign. *Gladman. Charles the ſecond*, &c. To his beloved and truſty Sir *R. P.* knt. and to his beloved *R. F.* eſq; *T. D.* gent. *C. F.* gent. *R. C.* gent. *M. S.* gent. and *J. W.* gent. greeting.

The dedimus poteſtatem for admitting the guardian.

ing. Know that we have given to you, ſix, five, four, three or two of you, power of admitting a guardian or guardians of *R. C.* eſq; being within age, as it is ſaid, to proſecute and defend a plaint which is before our juſtices of the bench, by our writ, between *R. B.* eſq; *A. M.* eſq; and *R. C.* gent. and the ſaid *R.* and *I. C.* ſpinſter, for that the ſame *R. A.* and *R.* and the ſaid *R.* and *I.* together and for undivided hold the manors of *Bettons* and *Milkwell*, with the appurtenances, and eight meſſuages, five cottages, ten gardens, ten orchards, one hundred acres of land, fifty acres of meadow, three hundred and forty acres of paſture, and eight acres of wood, with the appurtenances, in *Camberwell* and *Lambeth* in the county of *Surry*, the ſame *R.* and *I.* refuſe that partition be made thereof between them, according to the form of the ſtatute in ſuch caſe provided, and unjuſtly, and contrary to the form of the ſaid ſtatute, do not permit the ſame to be done, as it is ſaid; and therefore we command you, ſix, five, four, three or two of you, that when you ſhall have admitted the ſaid guardian or guardians, you certify to us in our *Chancery*, under your, ſix, five, four, three or two of your ſeals, the name or names of the ſame guardian or guardians, remitting to us this writ. Witneſs Ourſelf at *Weſtminſter* the 28th day of *February* in the twenty-fifth year of our reign. *Gladman.* By the lord chancellor of *England*, at the inſtance of the demandants *S. C.* The execution of this writ appears in a ſchedule to this writ annexed. *R. F. T. D.* received

The return.

received 6 *s.* 8 *d. J. L.* The anſwer of *R. F.* eſq; and *T. D.* gent. commiſſioners in the annexed writ, who ſay that the within-named *R. C.* eſq; within age, on the 11th day of *April* in the twenty-fifth year of the reign of our ſovereign lord *Charles* the ſecond, now king of *England*, *&c.* at *Adderly* in the county of *Salop*, came before us and choſe Sir *J. C.* bart. to be his guardian, who is admitted to proſecute and defend for the ſame *R.* of and in the plaint in the ſaid writ mentioned, between *R. B.* eſq; *A. M.* eſq; and *R. C.* gent. and the ſaid *R. C.* and *I. C.* ſpinſter, of and in the manors of *Bettons* and *Milkwell*, and lands mentioned in the annexed writ. *R. F. T. D. Surry, to wit, It is granted* by the court of the king here, that *J. F.* eſq; ſue for *I. C.* ſpinſter, who is within the age of twenty-one years, as guardian of the ſaid *I.* againſt *R. B.* eſq; *A. M.* eſq; and *R. C.* gent. of a plea of making partition.

A guardian admitted by the court for another infant defendant.

Surry, to wit, R. C. eſq; and *I. C.* ſpinſter, were ſummoned to anſwer *R. B.* eſq; *A. M.* eſq; and *R. C.* gent. of a plea, wherefore whereas the ſame *R. A.* and *R.* and the ſaid *R.* and *I.* together and for undivided hold the manors of, *&c.* in *Camberwell* and *Lambeth*, the ſame *R.* and *I.* refuſed partition thereof to be made between them, according to the form of the ſtatute in ſuch caſe provided, and unjuſtly, and contrary to the form of the ſaid ſtatute, do not permit the ſame to be done, *&c.* *And* whereupon the ſaid *R. A.* and *R.* by *W. W.* their attorney, ſay, that whereas one *J. C.* eſq; was lately ſeiſed of and

Declaration in partition.

J. C. ſeiſed in fee ſimple.

and in the manors and tenements aforesaid, with the appurtenances, amongst other things, in his demesne as of fee; *And* being so seised thereof, afterwards in the life-time of the said *J.* to wit, on the twentieth day of *April*, in the nineteenth year of the reign of the lord *Charles* the first, late king of *England*, by a certain indenture made at *Camberwell* aforesaid, between the said *J.* by the name of *J. C.* of *London*, esq; on the one part, and *J. H.* and *T. G.* gent. by the names of *J. H.* citizen of *London*, and *T. G.* of *Chinkford* in the county of *Essex*, of the other part, the counterpart whereof sealed with the seals of the said *J.* and *T.* the said *R. A.* and *R.* bring here into court, the date whereof is on the same day and year; the said *J.* in consideration of 5*s.* of lawful money of *England*, to him by them in hand paid, granted, bargained and sold to the same *J.* and *T.* the manors and tenements aforesaid, with the appurtenances, amongst other things, to have and to hold to the same *J.* and *T.* their executors, administrators and assigns, from the feast of the annunciation of the Blessed Virgin *Mary* then last past, for the term of half of one year then next following, fully to be complete and ended, if the said *J.* should live so long. By virtue of which demise the said *J.* and *T.* entered into the said manors and tenements, with the appurtenances, amongst other things; *And* by pretext thereof, and by force of a certain act made and provided in the parliament of the lord *Henry* the eighth, late king of *England*, for transferring

By indentures of lease and release, conveys to J. H. and T. G.

Lease for a year.

Stat. 27 H. 8. for transferring uses into possession.

ferring uſes into poſſeſſion, held on the fourth day of *February* in the twenty-ſeventh year of his reign, at *Weſtminſter* in the county of *Middleſex*, were poſſeſſed thereof; *And* being ſo poſſeſſed thereof, by a certain other indenture made at *Camberwell* aforeſaid, on the thirtieth day of *April* in the nineteenth year aforeſaid, between the ſaid *J.* by the name of *J. C.* of *London*, eſq; of the one part, and the ſaid *J.* and *T.* by the names of *J. H.* citizen of *London*, and *T. G.* of *Chinkford* in the county of *Eſſex*, gent. of the other part, the counterpart whereof ſealed with the ſeals of the ſaid *J.* and *T.* the ſaid *R. A.* and *R.* bring here into court, the date whereof is on the ſame day and year, the ſame *J.* for and in conſideration of the natural love and affection which he had and bore to one *T.* then his wife, and for a jointure to be made and ſettled to and upon the ſaid *T.* in bar and lieu of her dower, and for divers other good cauſes and conſiderations him thereunto moving, he the ſaid *J.* granted, releaſed and confirmed to the ſaid *J. H.* and *T. G.* their heirs and aſſigns, the manors and tenements aforeſaid, with the appurtenances, amongſt others, and the reverſion and reverſions thereof, to have and to hold to the ſaid *J. H.* and *T. G.* their heirs and aſſigns for ever, to the uſes following, that is to ſay, to the uſe of the ſaid *J. C.* for and during the term of his natural life, and after his death to the uſe of the ſaid *T.* for her natural life, for and in lieu and in recompence of ſuch title of dower and thirds, as the ſaid *T.* ſhould have and claim

Indenture of releaſe.

To the uſe of J. C. for life.

To the uſe of his wife for life.

claim of and out of the manors, lands and tenements of the ſaid *J. C.* and afterwards to the uſe of the ſaid *J. C.* his heirs and aſſigns for ever, as by the ſame indenture more fully appears. By virtue of which ſaid indenture laſt ſpecified, and by force of the ſaid act made and provided in the parliament of the ſaid lord *Henry* the eighth, late king of *England*, for transferring uſes into poſſeſſion, held on the fourth day of *February* in the twenty-ſeventh year of his reign, at *Weſtminſter*, aforeſaid, the ſaid *J.* was ſeiſed of the ſaid tenements, with the appurtenances, amongſt others, in his demeſne as of freehold, for and during the term of his natural life, the remainder thereof over as above limited. *And* the ſaid *J.* being ſo ſeiſed had iſſue, to wit, *J. C.* and *J. C.* his ſons, and *T. P.* and *I.* his daughters. *And* the ſaid *J. C.* the father being ſo ſeiſed of ſuch his eſtate, afterwards, to wit, on the firſt day of *June* in the thirteenth year of the reign of our lord the preſent king, at *Camberwell* aforeſaid, died, and the ſaid *T.* his wife ſurvived him, and entered into the ſaid manors and tenements, with the appurtenances, amongſt others, and was ſeiſed thereof in her demeſne as of freehold, for the term of her natural life, the remainder thereof over as above limited. *And* the ſaid *T.* being ſo ſeiſed thereof, the ſaid *J.* the ſon, and *J. C.* afterwards, to wit, on the firſt day of *Auguſt* in the nineteenth year of the reign of our ſaid lord the preſent king, at *Camberwell* aforeſaid died without iſſue, and the ſaid

To the uſe of the ſaid J. C. his heirs and aſſigns for ever.

J. C. had iſſue J. J. T. P. and I.

Died.

His wife ſurvived him.

J. and J. the ſons die without iſſue.

ſaid *T.* ſurvived them. *And* afterwards, to wit, on the ſecond day of *Auguſt* in the nineteenth year aforeſaid, at *Camberwell* aforeſaid, the ſaid *T.* the daughter, *cepit in virum* Sir *J. C.* bart. *And* by the ſaid Sir *J. C.* had iſſue the ſaid *R.* and the ſaid *T.* the daughter, afterwards, to wit, on the fifteenth day of *September* in the twenty-ſecond year of the reign of our ſaid lord the preſent king, at *Camberwell* aforeſaid died. And the ſaid *T.* the wife of the ſaid *J.* ſurvived her, and was and continued ſeiſed of the ſaid tenements, with the appurtenances, amongſt others. *And* the ſaid *T.* the wife of the ſaid *J.* being ſeiſed of ſuch her eſtate therein as aforeſaid, afterwards, to wit, on the ſecond day of *February* in the twenty-third year of the reign of our ſaid lord the preſent king, at *Camberwell* aforeſaid died, and the ſaid *R. P.* and *I.* ſurvived the ſaid *T.* the wife of the ſaid *J.* the remainder of the ſaid manors and tenements, with the appurtenances, belonging to the ſaid *R. P.* and *I.* after the death of the ſaid *T.* as co-heirs of the ſaid *J.* to wit, to the ſaid *R.* as ſon and heir of the ſaid *T.* the daughter, and to the ſaid *P.* and *I.* as daughters of the ſaid *J.* By which the ſaid *R. P.* and *J.* entered into the ſaid manors and tenements, with the appurtenances, amongſt others, and were ſeiſed thereof in their demeſne as of fee, to wit, the ſaid *R.* of one third part of the ſaid manor and tenements, with the appurtenances, to him and his heirs *contingen'*; and the ſaid *P.* of one other third

T. the daughter marries Sir J. C.

and by him had iſſue the defendant R.

and died.

T. the wife dies.

part of the ſaid manors and tenements, with the appurtenances, to her and her heirs *contingen'*; and the ſaid *I.* of one other third part of the ſaid manors and tenements, with the appurtenances to her and her heirs *contingen'*; *And* the ſaid *R P.* and *I.* being ſeiſed in form aforeſaid, the ſaid *P. cepit in virum* the ſaid *R. B.* whereby the ſame *R. B.* and *P.* entered into the ſaid manors and tenements, with the appurtenances, and were ſeiſed of the ſaid third part of the ſaid manors and tenements, with the appurtenances, to the ſame *P.* as aforeſaid *contingen'*, in their demeſne as of fee, in right of the ſaid *P.* and the ſaid *R. B.* and *P.* being ſeiſed of the third part of the ſaid manors and tenements, with the appurtenances, to them in the right of the ſaid *P.* as aforeſaid *contingen'*, a certain fine levied in the court of our lord the king now here, to wit, at *Weſtminſter*, in fifteen days of *Saint Martin* in the twenty-fourth year of his reign, before *J. V. J. A. W. W.* and *R. A.* juſtices, and other faithful ſubjects of our lord the king then there preſent. between *W. M.* eſq; and *A. B.* gent. plaintiffs, and the ſaid *R. B.* and *P.* his wife, deforceants, of the ſame third part, *ipſi P. contingen'*, by the name of a third part of the manors of *Bettons* and *Milkwell*, with the appurtenances, and of a third part of eight meſſuages, *&c.* in *Camberwell* and *Lambeth* aforeſaid, whereof a plea of covenant was ſummoned in the ſame court, to wit,

P. marries the plaintiff R B.

A fine levied of her third part.

wit, that the ſaid *R. B.* and *P.* acknowledged the ſaid third part, with the appurtenances, to be the right of the ſaid *W.* as that which the ſaid *W.* and *A.* had of the gift of the ſaid *R. B.* and *P.* and that they remiſed and quit-claimed for them the ſaid *R. B.* and *P.* and their heirs, to the ſaid *W.* and *A.* and the heirs of the ſaid *W.* for ever; and moreover the ſaid *R. B.* and *P.* granted for them and the heirs of the ſaid *P.* that they would warrant to the ſaid *W.* and *A.* and the heirs of the ſaid *W.* the ſaid third part, with the appurtenances, againſt them the ſaid *R. B.* and *P.* and the heirs of the ſaid *P.* for ever; which ſaid fine in form aforeſaid had and levied, was had and levied to the uſe of the ſaid *R. B. A. H.* and *R. C.* and their heirs for ever. By virtue of which ſaid fine the ſaid *R. A.* and *R.* were, and ſtill are ſeiſed of the ſame third part of the manors and tenements aforeſaid, with the appurtenances, in their demeſne as of fee; and ſo the ſaid *R. A.* and *R.* ſay, that they and the ſaid *R.* and *I.* together *et pro indiviſo* hold the ſaid manors and tenements, with the appurtenances, in form aforeſaid made; it belongs to them the ſaid *R. A.* and *R.* to hold one third part of the ſaid manors and tenements, with the appurtenances, and to the ſaid *R.* it belongs to hold one other third part of the ſaid manors and tenements, with the appurtenances; and to the ſaid *I.* it belongs to hold one other third part of the ſaid manors and tenements, with the appurtenances, *reſid' tenend' eis in ſeparalitate*; ſo that the ſame *R. A.* and *R.* of

To the uſe of the plaintiffs.

one third part of the ſaid manors and tenements, with the appurtenances, belonging to them the ſaid *R. A.* and *R.* as aforeſaid, and the ſaid *R.* of another third part of the ſaid manors and tenements, with the appurtenances belonging to him the ſaid *R.* as aforeſaid, and the ſaid *I.* of another third part of the ſaid manors and tenements belonging to her the ſaid *I.* as aforeſaid, ſeparately *appruare ſe poſſint*; the ſame *R.* and *I.* refuſe partition thereof to be made between them, according to form of the ſtatute in ſuch caſe provided, and unjuſtly, and contrary to the form of the ſaid ſtatute, do not permit the ſame to be done, *&c.* wherefore they ſay they are injured, and have damage to the value of 100 *l.* and therefore they bring ſuit, *&c.*

Judgment by nihil dicit.

And the ſaid *R.* by Sir *J. C.* bart. who is admitted to proſecute for the ſame *R.* who is within the age of twenty-one years, as guardian of the ſaid *R.* of the plea aforeſaid, and the ſaid *I.* by *J. F.* eſq; who is admitted by the court of our lord the king here to proſecute for the ſame *I.* who is within the age of twenty-one years, as guardian of the ſaid *I.* of the plea aforeſaid, come and defend the force and injury, when, *&c.* and ſay nothing in bar or preclusion of the ſaid action of the ſaid *R. A.* and *R.* and ſay nothing elſe thereupon. By which the ſaid *R. A.* and *R.* remain againſt the ſaid *R.* and *I.* thereof undefended. *Therefore it is conſidered,* that partition between the ſaid *R. A.* and *R.* and the ſaid *R.* and *I.* of the ſaid manors and tenements, with the appurtenances, be

made, &c. and nothing of mercy of the ſaid *R.* and *I.* becauſe they are under age, &c. *Upon which* it is commanded to the ſheriff, that in his proper perſon he go to the ſaid manors and tenements, with the appurtenances, and in the preſence of the ſaid parties to be ſummoned by him the ſaid ſheriff, if they will be preſent, and he cauſe the ſame manors and tenements, with the appurtenances, by the oath of good and lawful men of the ſaid county, reſpect being had to the true value of the ſaid manors and tenements, with the appurtenances, into three equal parts to be divided; and one part of the ſaid parts to the ſaid *R. A.* and *R.* and another part thereof to the ſaid *R.* and another part, reſidue thereof, to the ſaid *J.* to hold to them and their reſpective heirs, ſeverally to be delivered and aſſigned, ſo that neither the ſaid *R. A.* and *R.* nor the ſaid *R.* nor the ſaid *I.* have more of the ſaid manors and tenements, with the appurtenances, than belongs to them to hold; and that the ſaid *R. A.* and *R.* of their third part belonging to them of the ſaid manors and tenements, with the appurtenances, and the ſaid *R.* of his third part belonging to him of his ſaid manors and tenements, with the appurtenances, and the ſaid *I.* of her third part belonging to her of the ſaid manors and tenements, with the appurtenances, ſeparately *appruare ſe poſſint*; and that the ſaid ſheriff have here from the day of the *Holy Trinity* in three weeks, that partition by him diſtinctly and openly made

Writ to the ſheriff to make partition.

The return.

under his ſeal, &c. and the ſeals, &c. *At which day* came here as well the ſaid *R. A.* and *R.* as the ſaid *R.* and *I.* by their attornies aforeſaid, and the ſheriff, to wit, *J. B.* eſq; now returns here a certain partition between the parties aforeſaid of the manor and tenements aforeſaid, with the appurtenances, by him, before him, by virtue of the ſaid writ, and according to the form of the ſaid writ, by the oath of twelve, &c. made in theſe words:

Continuance by cur. adviſari vult.

Surry, to wit, I *J. B.* eſq; &c. *And* becauſe the juſtices here will adviſe themſelves of and upon the premiſſes before they give judgment thereon, day is given to the ſaid *R. A.* and *R.* here until in fifteen days of *Saint Martin*, to hear their judgment thereupon, for that the ſaid juſtices here are not yet, &c. At which day came here the ſaid *R. A.* and *R.* by their attorney aforeſaid; and upon this the ſaid premiſſes being ſeen, and by the juſtices here fully underſtood, it is conſidered *quod partitio præd' firma et ſtabilis imperpetuum*, &c.

Sci. fa. quare execution' non, &c. on a judgment in an inferior court, removed by writ of error. B. R.

——— *To* the ſheriff of *Devonſhire*, greeting. *Whereas W. B.* in our court before the mayor of the borough of *Totneſs* in your county, by the judgment of the ſame court recovered againſt *W. G.* 5 *l.* 3 *s.* 4 *d.* which in our ſaid court were adjudged to the ſaid *W. B.* for his damages which he ſuſtained as well by occaſion of the not performing certain promiſes and undertakings made to the ſaid *W. B.*

B. by the ſaid *W. G.* and not performed, as for his coſts and charges expended by him about his ſuit in that behalf, whereof the ſaid *W. G.* is convicted, as by the inſpection of the record and proceſs thereupon, which for the cauſe of error intervening we lately cauſed to come in our court before us, and in our ſaid court before us is now remaining, more fully appears; and now on the behalf of the ſaid *W. B.* we have been lately informed in our court before us, that although judgment be therein given, yet execution of the ſaid judgment ſtill remains to be made to him; whereupon the ſaid *W. B.* hath prayed us that a proper remedy may be provided for him in this behalf. *And* we being willing that what is juſt ſhould be done in this behalf, command you, that by good and lawful men of your bailiwic you make known to the ſaid *W. G.* that he be before us in fifteen days of *St. Martin*, whereſoever we ſhall then be in *England*, to ſhew, if any thing he has or knows to ſay for himſelf, why the ſaid *W. B.* ought not to have execution of the damages aforeſaid, according to the force, form and effect of the ſaid recovery, if it ſhall ſeem expedient to him, and further to do and receive what our ſaid court before us ſhall then conſider of him in this behalf, and that you have there then the names of thoſe by whom you ſhall make known to him and this writ. Witneſs, *&c.*

Paſch. 16 *Geo.* 2.

Entry of ſci. fa. ſur juridic. poſt ann. & diem.

Kent, *to wit.* OUR lord the king ſent to the ſheriff of *Kent* his writ cloſe in theſe words, to wit, *George* the ſecond, by the grace of God, of *Great Britain*, *France* and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Kent*, greeting. Whereas *H. P.* lately in our court before us at *Weſtminſter*, by bill, without our writ, and by the judgment of the ſame court, recovered againſt *A. P.* 1352 *l.* for debt, and alſo 63 *s.* for his damages which he ſuſtained as well by occaſion of the detaining that debt, as for his coſts and charges laid out by him about his ſuit in that behalf, whereof the ſaid *A.* is convicted, as appears to us of record; and now on the behalf of the ſaid *H.* we have been informed in our court before us, that although judgment be thereupon given, yet execution for the ſaid debt and damages ſtill remains to be made to him; whereupon the ſaid *H.* hath prayed us that a proper remedy may be provided for him in this caſe; and we being willing that what is juſt ſhould be done on this behalf, command you, that by good and lawful men of your bailiwic you make known to the ſaid *A.* that he be before us at *Weſtminſter* on *Monday* next after the morrow of the Aſcenſion of our Lord, to ſhew, if any thing he has or knows to ſay for himſelf, why the ſaid *H.* ought not to have his execution againſt him for the debt and damages aforeſaid according

cording to the force, form and effect of the ſaid recovery, if it ſhall ſeem expedient to him, *&c.* and further to do and receive what our ſaid court before us ſhall then and there conſider of him in this behalf, and have there then the names of them by whom you ſhall make known to him, and this writ. Witneſs Sir *W. L.* knt. at *Weſtminſter*, the ſeventh day of *May* in the ſixteenth year of our reign. *At which day* before our lord the king at *Weſtminſter* the ſaid *H. P.* comes in his proper perſon. *And* the ſheriff of *Kent*, to wit, *T. W.* eſq; ſheriff of the ſaid county of *Kent*, returns that the ſaid *A. P.* hath nothing in his bailiwic, whereby or by which he can cauſe him to know, neither is he found in the ſame; and the ſaid *A.* comes not. *Therefore*, as before, it is commanded to the ſheriff, that by good and lawful men of his bailiwic he make known to the ſaid *A.* that he be before our lord the king at *Weſtminſter* on *Friday* next after the morrow of the *Holy Trinity*, to ſhew in form aforeſaid, if, *&c.* and further, *&c.* The ſame day is given to the ſaid *H.* at the ſame place, *&c. At which day* before our lord the king at *Weſtminſter* the ſaid *H.* comes in his proper perſon, *And* the ſheriff, as before, returns that the ſaid *A.* hath nothing in his bailiwic whereby or by which he could cauſe him to know, neither is he found in the ſame. *And* the ſaid *A.* although at the ſame day ſolemnly demanded, comes not, but made default. *Therefore* it is conſidered, that the ſaid *H.* have his execu-

Return nihil.

Alias awarded.

Return nihil.

Judgment by default.

tion againſt the ſaid *A.* for the debt and damages aforeſaid, according to the force, form and effect of the ſaid recovery, by the default of the ſaid *A.* &c.

Roll 381. *Lee.*

Sci. fa. quare execution non after error on a judgment in the palace court. B. R.

——— *To* the ſheriff of *Surry*, greeting. *Whereas J. Y.* lately in the court of our palace of *Weſtminſter* before the judges of that court, without our writ, by the judgment of the ſame court, recovered againſt *T. W.* 6*l.* 19*s.* 10*d.* for his damages which he ſuſtained as well by occaſion of the not performing certain promiſes and undertakings made by the ſaid *T.* to the ſaid *J.* at *Southwark* in your county, and within the juriſdiction of the ſame court, as for his coſts and charges expended by him about his ſuit in that behalf, whereof the ſaid *T.* is convicted, as by the inſpection of the record and proceſs thereof, which lately in our court before us at *Weſtminſter* now remaining, and which for certain cauſes we lately cauſed to be brought into our ſame court before us, appears to us of record; and now on the behalf of the ſaid *J.* in our court before us we have been informed, that although judgment be thereof given, yet execution of the ſaid damages ſtill remains to be made to the ſaid *J.* whereupon the ſaid *J.* hath beſought us that a proper remedy may be provided for him in this behalf. *And* we being willing that what is juſt ſhould be done in this behalf, do command you, that by good and lawful men of your bailiwic you make

make known to the ſaid *T.* that he be before us on the octaves of *St. Hilary*, whereſoever we ſhall then be in *England*, to ſhew, if any thing he has or knows to ſay for himſelf, why the ſaid *J.* ought not to have his execution againſt him of the damages aforeſaid, according to the force, form and effect of the ſaid recovery, if it ſhall ſeem expedient to him, and further to do and receive what our ſame court before us ſhall conſider of him in this behalf, and have there the names of thoſe by whom you ſhall make known to him, and this writ. Witneſs, *&c.*

——— *To* the mayor, aldermen and ſheriffs of *London*, alſo to all captains and other officers and miniſters in this behalf whatſoever, and to every one of them, greeting. Whereas as well from our royal dignity, as from ancient cuſtom from time out of mind uſed and approved in the court of us and our progenitors, formerly kings and queens of *England*, before us and our ſaid progenitors, all and ſingular our juſtices to hold pleas before us, alſo all and ſingular officers, clerks, attornies and miniſters of the ſame court, who are bound by oath to beſtow their ſervice to us and our people, to exerciſe any offices or ſervices elſewhere than in our ſaid court, whereby from our ſaid court, or from their due attendance there, they may be withdrawn or retarded, according to the liberties and privileges of our ſaid court, for the whole time aforeſaid uſed and approved in the ſame, ought

Superſedeas for one of the clerks of the chief clerk not to bear arms or ſerve as a ſoldier. B. R.

ought not, nor at times paſt have been uſed to be choſen, drawn, bound or compelled; yet you, or ſome of you, having no regard to the dignity and privileges aforeſaid, as we are informed, have choſen and charged, or cauſed to be choſen and charged, or at leaſt intend and threaten to chuſe and charge one *A. M.* gent. one of the clerks of Sir *R. H.* knt. and *S. T.* eſq; our chief clerks aſſigned to inrol pleas in our court before us, whoſe attendance is required in our ſame court before us, as according to the duty of his office he is bound, to ſerve as a ſoldier under the command of you or of ſome of you, or in the militia or trained-bands in your county, or to bear or exerciſe military arms, which if it be permitted will tend to the hurt and injury of us and of our ſubjects proſecuting and defending in our ſame court, and of the ſaid *A.* alſo to the overthrow of our ſaid court, and of the dignity and privileges aforeſaid; whereupon the ſaid *A.* humbly ſupplicating us, has informed us of the premiſſes, and We favouring the ſupplication of the ſaid *A.* and willing that our dignity be maintained, and the liberties and privileges of our ſaid court be obſerved, command you and every one of you, that you and every one of you intirely ſuperſede from in any manner hereafter chuſing, charging, or compelling the ſaid *A.* to do any ſuch ſervice or buſineſs of a ſoldier, or of one of the militia or trained-bands, or to bear and exerciſe any arms as aforeſaid; and if before the receipt of this writ

writ you have choſen and charged the ſaid *A.* to do any ſuch ſervice or buſineſs, or to bear and exerciſe any arms as aforeſaid, that then you and each of you without delay diſcharge and releaſe the ſaid *A.* from all ſuch ſervice or buſineſs, and from all his attendance thereupon, and the chuſing and charging of the ſaid *A.* in this behalf being wholly omitted, you cauſe one other man, as to his eſtate and poſſeſſions more fit, to be in due manner choſen and charged in his place, at your peril. Witneſs *J. K. &c.*

Writ of privilege for an attorney B.R. to a ſuit againſt him in the mayor's court, London.

——— *To* the mayor, aldermen and ſheriffs of the city of *London*, and to every of them, greeting. *Whereas* as well on account of our royal dignity, as by ancient cuſtom agreeable thereto, uſed and approved in times paſt, hitherto the uſage hath been, that all and ſingular the attornies of our court before us ought not, neither have they during all the time aforeſaid been, nor have uſed or been accuſtomed to be drawn or compelled to anſwer (elſewhere than in our ſaid court before us) before any ſecular judges in any pleas or plaints (pleas of freehold and appeal only excepted;) and now on the behalf of *J. A.* gent. one of the attornies of our ſaid court before us, we are informed that Sir *J. B.* knt. chamberlain of the ſaid city of *London*, notwithſtanding the premiſſes, and not regarding our royal dignity, nor the cuſtom aforeſaid, hath drawn the ſaid *J. A.* into plea in our court before you, ſome or one of you, under pretence

pretence of a certain plaint levied againſt the ſaid *J. A.* before you, ſome or one of you, in a certain plea of debt upon demand of five pounds of lawful money of *Great Britain*, at the ſuit of him the ſaid Sir *J. B.* chamberlain, as aforeſaid, to the manifeſt prejudice and leſſening of our dignity and infringement of the cuſtom aforeſaid, and to the great expence and hindrance of the ſaid *J. A.* which practice, if it ſhould be permitted, would hereafter afford an ill example to others; We therefore command and ſtrictly injoin you and every one of you, that you and every of you, wholly deſiſt from any further proceeding in the plaint aforeſaid before you, or any of you, declaring to the ſaid Sir *J. B.* ſo proſecuting the ſaid plaint before you, ſome or one of you, that he repair to our court before us there to ſeek for juſtice in that behalf, if he ſhall think fit ſo to do. Witneſs Sir *W. L.* knt. at *Weſtminſter* the fourteenth day of *June* in the ——— year of our reign.

Lee.

John Alexander proper,
23 *June* 17—.

Superſedeas for a clerk of the chief clerks and his ſervant to the judges of the court of Com-

——— *To* our beloved and truſty Sir *E. A.* knt. and his companions, our juſtices of the bench, greeting. *Whereas* as well from our royal dignity, as from ancient cuſtom from times long paſt hitherto uſed and approved, it has obtained that our chief clerks aſſigned

assigned to inrol pleas in our court before us and their clerks, and the servants of their clerks, ought not, and for the whole time have not been used, in any other place than in our same court, to be drawn or compelled to answer before any secular judges in any pleas or plaints, (plea of freehold only excepted); *And* now in our same court before us, on the behalf of *J. E.* gent. one of the clerks of *T. R.* and *J. R.* esqrs. our chief clerks assigned to inrol pleas in our court before us, and of *R. J.* servant of the said *J. E.* We are given to understand, that one *J. P.* slighting the said custom has drawn the said *J. E.* and *R.* by the names of *J. E.* of, *&c.* and *R. J.* of, *&c.* before you into plea, in a plea of trespass, to the great expence and grievance of the said *J. E.* and manifest breach of the liberties and privileges aforesaid in our court before us for the whole time aforesaid hitherto used and approved, whereof it is agreeable to us to provide for him a speedy remedy; and we being willing that the said liberties and privileges for so long time hitherto used and approved be kept unbroken, command you, that you altogether supersede from further holding the said plea before you, or from compelling the said *J. E.* and *R. J.* to answer further upon the same plea before you, telling on our behalf to the said *J. P.* that he come to our said court before us, there to obtain justice, if he will. Witness *C. W. &c.*

mon Pleas, to stay a suit against them there in a plea of trespass. B. R.

* —— To

Superſedeas for the ſheriff of Middleſex as an officer of B. R. directed to the judges of the court of C. B. upon an action commenced by a clerk of an exigenter in C. B. againſt the ſheriff.

*——— *To* Sir *J. B.* knt. and his companions, our juſtices of the bench, greeting. *Whereas* as well from our royal dignity, as from ancient cuſtom, according to the ſame in times paſt uſed and approved it has hitherto obtained, that all miniſters in our court before us daily attending our ſaid court, any where but in our ſame court before us, to anſwer before any juſtices or ſecular judges upon any pleas or plaints (pleas of freehold only excepted) to be drawn or compelled ought not, nor for the whole time aforeſaid have been accuſtomed. *And* now in our ſame court before us, on the behalf of *J. J.* ſheriff of the county of *Middleſex*, and one of the miniſters in our ſame court before us, by reaſon of his office of ſheriff of the ſaid county of *Middleſex*, executing and returning all and ſingular writs and precepts of our ſaid county of *Middleſex*, we are given to underſtand, that one *J. F.* one of the clerks of *W. J.* one of the exigenters in the bench, little regarding the ſaid cuſtom, the ſaid *J.* before you draws in plea in a plea of treſ-

* This writ was granted by the court, for that the ſheriff returned a reſcue, when *J. F.* ſuppoſing he had made no reſcue, brought this action againſt the ſheriff for a falſe return, and upon the granting this writ a diſpute aroſe between *W. F.* clerk of the crown and *W. R.* prothonotary, in whoſe office this writ ought to be made, who not agreeing between themſelves, at laſt by the court in full court it was agreed, that it ſhould be made out by the prothonotary, for that the ſaid writ of reſcue only concerned the perſon of the ſheriff of *Middleſex*.

paſs

paſs to the grievance and no ſmall expence of the ſaid *J. J.* and manifeſt violation of the ſaid liberties and privileges in our ſaid court before us for the whole time aforeſaid hitherto approved, wherefore it ſeems agreeable to us to provide him a ſpeedy remedy; and We being willing that the liberties and privileges aforeſaid, for ſo long time uſed, be inviolably obſerved, command you, that from further holding before you the plea aforeſaid, and from compelling the ſaid *J. J.* further to anſwer upon the ſame plea, you intirely ſuperſede, telling on our behalf the ſaid *J. F.* that he may come to our ſaid court before us, there to obtain juſtice if he will. Witneſs *E. M.* knt. *&c.*

Marſhalſea,

Bail-piece in audita querela.

Marſhalſea, to wit, *J. L.* of, *&c.* is delivered on a bail to proſecute with effect a writ of *audita querela*, by him brought to be diſcharged of and from a judgment given againſt him in the court of his late majeſty *Charles* the firſt, late king of *England*, at the ſuit of one *T. W.* for one hundred pounds of debt, and for damages, coſts and charges.

To *J. D.* of, *&c.* yeoman,
E. E. of, *&c.* yeoman.

(Four bail required.)

J. B.
Attorney.

Form of taking the recognizance.

You ſeverally acknowledge yourſelves to owe to *T. D.* the plaintiff in the original action, the ſum of ———.

The condition.

Upon condition, that the plaintiff in the *audita querela* ſhall proſecute his writ with effect; and if the ſaid plaintiff ſhall happen to be convicted, or make default in the premiſſes,

miſſes, that he ſhall pay the condemnation money, or you will do it for him.

Are you content?

England, to wit, Satisfaction acknowledged between *C. K.* eſq; plaintiff in error, and *G. D.* gent. one of the attornies of his majeſty's court of *Common Bench* at *Weſtminſter*, defendant in error of a judgment of the ſaid court of the bench.

Satisfaction-piece on a judgment affirmed in error.

Damages —— 43 *l.*

Coſts on affirming the judgment —— 13 *l.*

R. R.
Attorney.

Judgment entered of *Eaſter* term 14 *Geo.* 2.

Roll 254.

Monday *next after five weeks from* Eaſter *day in the ſeventeenth year of king* George *the third.*

Rule for the marſhal to bring the defendant into court, or acknowledge him to be in cuſtody, &c. in order to his being charged in execution.

H. } IT is ordered that the marſhal of the
C. } *Marſhalſea* of this court do bring the defendant into this court within three days next after notice of this rule to be given to him, or ſhall give a note in writing under his hand, acknowledging the defendant to be in his actual cuſtody, or ſhall ſhew cauſe to the contrary within the time aforeſaid, and give notice thereof to the attorney for the plaintiff.

By the court.

I acknowledge the defendant to be a priſoner in my cuſtody this 27th day of *May* 1776.

B. T. marſhal.

Middleſex,

Middleſex, to wit, *J. C.* late of the pariſh of *St. Clement Danes* in the county of *Middleſex*, eſq; is committed in execution to the cuſtody of the marſhal, *&c.* at the ſuit of *T. H.* for forty-five pounds and ten ſhillings damages, there to remain until, *&c.*

Commitment-piece.

R. R.
Attorney.

Judgment of *Michaelmas* term in the ſeventeenth year of king *George* the third.

Roll 663.

Rule	4	0
Marſhal	10	6
With *committitur piece*	2	0
	16	6

INDEX.

Abatement.

1. THAT there was another churchwarden not named in the bill, *page* 1
2. That the plaintiff is an alien enemy, 3
3. *Miſnomer* in the ſtile of the plaintiffs, a corporation, 4
4. Replication that after the laſt continuance the plaintiff obtained letters of abſolution, 7
5. *Miſnomer* in the defendant's Chriſtian name, 8
6. *Miſnomer* in the defendant's ſurname, 8
7. That the defendant is an eſquire, 9
8. That the defendant is a doctor of phyſic, 9
9. Infancy by guardian, 10
10. That the defendant is adminiſtrator, and not executor, 10
11. That the defendant, a feme, is married; replication and rejoinder, *page* 12
12. That the defendant is a filacer, *B. R.* and ſuable by bill only, 14
13. That the defendant is an attorney, *C. B.* 16
14. That others, who are not named in the declaration, jointly executed the bond with the defendant, 17
15. That another jointly with defendant executed the deed, and jointly covenanted, 18
16. *Lis pendens* in the ſame court, 19
17. *Lis alibi pendens*, 23
18. Plea to a *Scire facias quare executionem non* in error, that there are not 15 days between the teſte and return, 24

19. Plea to a *ſcire facias* a writ of error returnable in the *Exchequer-chamber*, *page* 25
20. A writ of error depending in the *Exchequer-chamber*, 27
21. Miſpriſion of the county, 29
22. Falſe *Latin* in the bond, 29

Account.

1. Declaration in account by a churchwarden againſt a late churchwarden, 43
2. Declaration in account againſt a guardian and bailiff, 44
3. Declaration in account by a merchant's executors againſt his factor as bailiff, 46
4. Declaration in accompt as bailiff of goods and chattels, 48
5. Declaration in accompt by the preſent churchwardens, againſt the late churchwardens, 49
6. Plea, *ne unques ballivus*, 49

Adminiſtrators.

See title *Executor* and *Adminiſtrators.*

Declarations by them.

1. Declaration in debt on a bond by the adminiſtrator of the obligee, *page* 242
2. Declaration in debt on ſeveral bonds by the adminiſtratrix of the obligee, 244
3. Declaration in debt on a bond by baron and feme, adminiſtratrix of the obligee, 247
4. Declaration in debt on a bond by an adminiſtrator of the obligee *durante minori ætate*, *&c.* (when there had been a former adminiſtration *durante minori ætate*) againſt the executrix of the obligor, 252
5. Declaration in debt on a bond by the adminiſtrator *de bonis non adminiſtratis* by a late executrix of the obligee, againſt baron and feme obligor, the bond being entered into by the feme whilſt ſhe was ſole, 254
6. Declaration in debt on a bond by the adminiſtrator *de bonis non adminiſtratis* by a late adminiſtrator of the obligee, 256

Decla-

Declaration againſt them.

1. Declaration in debt on a bill penal payable at ſeveral times by the obligee againſt baron and feme, adminiſtratrix of the obligor, *page* 268

Affidavit.

1. Affidavit of the truth of a plea in abatement, 29

Affirmance.

1. Judgment affirmed in the *Exchequer-chamber*, 375, 414
2. Judgment affirmed in *B. R.* 412

Aſſault.

See *Treſpaſs.*

Attornies.

Declarations for them.

1. Declaration in caſe *ſur aſſumpſit* by an attorney *B. R.* againſt two jointly for buſineſs done, money laid out, and for fees, 110
2. For money laid out and expended, 112

Audita querela.

1. Bail-piece in *audita querela*, *page* 584

Avowry.

1. For rent arrear, ~~444~~ 452
2. Replication no rent arrear, ~~446~~ 454
3. For ſalvage, 459
   Replication *de injuria ſua propria*, 453

Bail.

1. Entry of recognizance of bail after the declaration, 485
2. Bail-piece in *audita querela*, 584
3. The form of taking the recognizance of bail in error *coram nobis reſiden.* 411

Bar.

1. *Nul tiel record* and replication, 232
2. *Non eſt factum*, 240
3. *Non eſt factum teſtatoris*, 240
4. Payment pleaded to debt on a judgment, replication, 229
5. Payment pleaded purſuant to the ſtatute to debt on a bond,

bond, and replication, *page* 80, 250
6. Payment pleaded to debt on a bond at a future day *ante exhibitionem billæ*, and replication, 267
7. *Riens per diſcent tempore exhibitionis billæ*, and replication, 259
8. *Cognovit actionem ſed riens per diſcent*, except four meſſuages, *&c.* and the reverſion of, *&c.* judgment of the tenements confeſſed, and of the reverſions *quando acciderent*, 262
9. A judgment in *C. B.* recovered againſt the defendant's inteſtate in debt *ſur mutuatus*, and a judgment againſt the defendant on a bond due by the inteſtate, *plene adminiſtravit*, and have no goods except to the value of ten pounds. Replication, judgments kept on foot *per fraudem*, and aſſets ultra demurrer and joinder, 270
10. Plea by an executrix, a bond entered into by teſtator, the condition, and what really due; two other bonds in the like manner; articles entered into by teſtator, with a penalty; articles not performed by teſtator, and what due thereon; a judgment recovered againſt executrix by the indorſee of a foreign bill of exchange drawn on and accepted by teſtator: *plene adminiſtravit*, except 1000 *l.* liable as above; Replication aſſets *ultra*, *page* 161
11. Plea by adminiſtrator no aſſets, except, *&c.* 97
12. Plea by an executor that teſtator was indebted by bond, upon which obligee recovered judgment againſt defendant, *et plene adminiſtravit præter*, *&c.* 97
13. Plea in treſpaſs, 100
14. That there was an interlineation made in the bond after it was executed, *et ſic non eſt factum*, 299
15. *Non aſſumpſit* to the ſecond count, and demurrer to the firſt, 140
16. *Non aſſumpſit* ſpecial, 126
17. Not guilty as to part, and juſtification as to reſidue, and replication, 493
18. Not guilty in treſpaſs and aſſault, 378, 390
19. Not guilty in treſpaſs, 499
20. Avowry for rent arrear, 452
21. Replication no rent arrear, 454
22. Avowry for ſalvage, 151
Replication *de injuria ſua propria*, 457
23. Co-

23. Conuſance a diſtreſs for a poor's rate. Replication *de injuria ſua propria*, *page* 456
24. Property in a ſtranger, 463
Replication, 464
25. Conuſance as bailiff for rent arrear, 473
26. Conuſance as bailiff for rent-ſervice, replication not ſeiſed of the rent, 474
27. *Liberum tenementum alterius*, and defendant entered by his command, replication, 471
28. That the plaintiff came into a ſtable of defendant's maſter, and frightened the horſes, and defendant to put him out *molliter manus impoſuit*, and replication, 504
29. The *locus* in *quo* parcel of a cloſe called, &c. the freehold of *A. T.* who conveyed to defendant and *R. S.* plaintiff claiming right, entered on defendant and *R. S.* whereupon defendant in his own right, and in right of *R. S.* re-entered, and juſtifies; replication the *locus in quo* is parcel of the manor of *B.* and granted by copy to plaintiff and his wife, and not parcel of the cloſe called, &c. 510
&c.
30. *Son aſſault demeſne*, 78
31. *Non aſſumpſit* as to part, a tender as to the reſidue, *page* 79
32. Payment to a bill obligatory according to the ſtatute, 79
33. *Solvit ad diem*, 80
34. To an action againſt the marſhal for an eſcape, that *P. G.* in the declaration named eſcaped out of defendant's cuſtody againſt his will, and returned into the ſaid priſon without his knowledge, and is there detained, 52
Demurrer to a declaration againſt the marſhal for an eſcape, 94
35. Same plea by the warden of the *Fleet*, 52, 90, 92
36. By an executrix, of a bond given by her teſtator and judgment thereon, with *plene adminiſtravit* in bar of plaintiff's action, 55
37. Plea, a general releaſe, 57
Replication *non eſt factum*, 58
Plea a general releaſe, 58
Replication dureſs of imprisonment, 60
Joinder, 60
38. A juſtification in treſpaſs, as having a right to and uſing a way through the *locus in quo*, &c. 63
39. To an action of covenant brought by the executrix of

of the leſſor againſt the executrix of the leſſee, that the leſſee had aſſigned the premiſſes, and the leſſor had notice and accepted the rent of the aſſignee. Demurrer, &c. *page* 69

40. Plea by an executrix, a bond entered into by her teſtator, and judgment thereon againſt her, 71
Replication that the bond was not for a true and juſt debt, but upon condition, 74
Demurrer, &c. 75

41. To a plea of *non aſſumpſit infra ſex annos*, replication a bill of *Middleſex*, &c. 81

42. Plea, performance of award, 345

43. Plea no award or umpirage, made, 346

44. Plea, tender and refuſal of award, 348

Baron and feme.

Declarations by them.

1. Declaration in debt by baron and feme on a bond to the feme whilſt ſole, 297

2. Declaration in debt on a bond by baron and feme adminiſtratrix of the obligee, 247

3. Declaration in debt on a bond by baron and feme executrix of the obligee againſt the heir of the heir and deviſee of the obligor, *page* 265

Declarations againſt them.

1. Declaration in debt on a bond by the adminiſtrator *de bonis non adminiſtratis* by a late executrix of the obligee againſt baron and feme obligor, the bond being entered into by the feme whilſt ſhe was ſole, 254

2. Declaration in debt on a bill penal, payable at ſeveral times by the obligee againſt baron and feme adminiſtratrix of the obligor, 268

3. Declaration in caſe *ſur aſſumpſit* againſt baron and feme executrix, a ſum of money being placed in the teſtator's hands to be paid upon a contingency, he promiſed to pay the ſame accordingly, 122

Capias ad reſtituendum.

1. *Capias ad reſtituendum* on a judgment in an inferior court reverſed on a writ of error, 558

INDEX.

Capias ad ſatisfaciendum.

1. Award of *ca. ſa. page* 540
Return *non invent'*, award of *alias ca. ſa. vic. non miſit breve*, 540, 541
2. *Ca. ſa.* againſt an adminiſtrator for coſts on a *non-proſs*, 543
3. The like on a *non-proſs* for not declaring, 547
4. *Ca. ſa.* on a judgment in an inferior court *poſt ſci. fa.* 544
5. *Ca. ſa.* for a bailiff in replevin, 545
6. *Teſtatum ca. ſa.* thereon, 545
7. *Ca. ſa.* in ejectment for a defendant after part levied by a *fi. fa.* 546
8. *Teſtatum ca. ſa.* in debt after part levied by *fi. fa.* 548
9. *Ca. ſa.* in debt againſt an executrix after a *devaſtavit* returned on a *fi. fa.* 549
10. *Ca. ſa.* againſt an adminiſtratrix in debt after a *devaſtavit* returned on a *fi. fa.* of part of the debt, 551
11. *Teſtatum ca. ſa.* againſt the plaintiff after a verdict in replevin, 552
12. *Teſtatum ca. ſa.* againſt one bail in caſe, 553
13. *Teſtatum ca. ſa.* in debt, and for coſts in error after judgment affirmed, *page* 554
14. *Ca. ſa.* againſt an executrix by ſurviving executors, 556

Capias in withernam.

1. *Capias* in *withernam* upon a *return. habend.* after a plea of property in a ſtranger, 559

Caſe.

1. *Sur aſſumpſit* for money lent, 159
2. *Sur aſſumpſit* for money had and received, 115, 116, 160
3. *Sur aſſumpſit* for money laid out, 112, 116, 160
4. *Sur aſſumpſit* for goods ſold and delivered, 153
5. *Sur aſſumpſit* by the ſecond indorſee of a promiſſory note againſt the drawer, 104
On another note, part paid, and *aſſumpſit* for the reſt, 107
6. *Sur aſſumpſit* on a promiſſory note by joint indorſees againſt the drawer, 114
For money received to the defendant's uſe, 115
7. *Sur aſſumpſit* on a promiſſory note by the indorſee againſt the drawer, 104, 127

8. *Sur*

8. *Sur aſſumpſit* on a promiſſory note by the indorſee on a note drawn by and in the name of the defendant's ſervant, *page* 156
9. *Sur aſſumpſit* on an inland bill of exchange by an indorſee againſt the drawer, 136
10. *Sur aſſumpſit* on an inland bill of exchange drawn by one for himſelf and partner, brought by the payee againſt the acceptor, 139
11. *Sur aſſumpſit* on a foreign bill of exchange by a ſecond indorſee againſt the acceptor, 142, 174
12. *Sur aſſumpſit* on a foreign bill of exchange by the drawee againſt the ſurviving drawer, 145
For money had and received on a joint promiſe againſt the ſurvivor, 146
13. *Sur aſſumpſit* for freight of goods and merchandize, 108
14. *Sur aſſumpſit* by an attorney *B. R.* againſt two jointly for buſineſs done, money laid out, and for fees, 110
For money laid out and expended, 112
15. *Sur aſſumpſit* againſt executor for money had and received by teſtator, 116, 160
Money laid out, 117, 160
Inſimul computaſſ. plaintiff and teſtator, 117
16. *Sur aſſumpſit* againſt an executrix for money lent to the teſtator, *page* 159
17. *Sur aſſumpſit* againſt baron and feme executrix; a ſum of money being lodged in the teſtator's hands, to be paid to the plaintiff upon a contingency, he promiſed to pay the ſame accordingly, 119
18. *Sur aſſumpſit* on ſeveral iſſues directed out of chancery, 119
19. *Sur aſſumpſit* by an aſſignee of a bankrupt's eſtate for goods ſold and delivered by the bankrupt, 153
20. *Sur aſſumpſit* againſt one co-partner, the other being outlawed for goods ſold and delivered, 155
21. Declaration in caſe for ſcandalous words, 186
22. For breaking and entering plaintiff's houſe, 491
For breaking and entering plaintiff's houſe and diſturbing him in the poſſeſſion, 492
For breaking and entering plaintiff's houſe and taking away his goods, 493
23. For entering plaintiff's hop-gardens, pulling down the hop-poles, and cutting the hop-binds, 516

Cer-

Certiorari.

1. *Certiorari* prayed, *page* 400, 405
2. *Certiorari* [illegible] *custos brevium* to certify an attachment of privilege, 418
3. *Certiorari* to the chief justice *C. B.* to return the admission of an infant to sue by guardian, 416

Challenge.

1. Challenge to the sheriffs, and *venire* awarded to the coroners, 178

Chancery.

1. Issues directed out of *Chancery*, 129

Committitur.

1. Commitment piece, 595

Continuances.

1. By *cur. advisare vult.* 5, 62, 70, 86, 150, 179, 184, 277, 364, 372, 382, 396, 403, 420
   In the *Exchequer-chamber*, 396
2. By *cur. advisare vult* of an issue at law, where there is also an issue in fact, *p.* 149
3. By *coronatur non misit breve*, 179
4. By *vic' non misit breve*, 81, 367, 368, 369, 379

Conusance.

1. A distress for a poor's rate, 456
   Replication *de injuria sua propria*, 457
2. Conusance as bailiff for rent arrear, 468
3. Conusance as bailiff for rent-service; bar not seised of the rent, 473

Covenant.

1. Declaration in covenant on a charter-party of affreightment, 191
2. Declaration in covenant, for non-payment of rent, and not repairing premisses, pulling down partitions, *&c.* 197
   Plea, 202
   And rule for bringing the rent into court, 204
3. Declaration in covenant for not instructing apprentice, and turning him away before his time, 206
   Plea, 209
4. De-

4. Declaration in covenant againſt the aſſignee of a leſſee for years, for non-payment of rent, *page* 210
5. Plea, that nothing of the premiſſes ever came to the defendant by aſſignment, 214
6. Replication, that the premiſſes did come to defendant by aſſignment, 215

Death.

See *Demiſe le roy.*

1. Of one of the plaintiffs, 462
2. Of one of the defendants, 408

Debt.

1. Declaration on the ſtatute againſt bribery at elections, 215
2. Declaration on the *ſtat.* 9. *Annæ* againſt a coachman for carrying letters, 222
3. Declaration on 3 & 4 *Annæ*, *c.* 4. for travelling as an hawker under colour of a borrowed and hired licence, 224
4. Declaration on ſame *ſtat.* againſt an hawker for lending out his licence to hire, 225
5. Declaration in *B. R.* on a judge in *C. B.* 227
6. Declaration in debt on a judgment, (recovered againſt the defendant as executrix) ſuggeſting a *devaſtavit*, *page* 230
7. Declaration in debt on a bond, 234
8. Declaration in debt on ſeveral bonds, 244, 353
9. Declaration in debt by baron and feme on a bond to the feme whilſt ſole, 297
10. Declaration in debt on a bond by the ſurviving obligee againſt the executor of the obligor, 236
11. Declaration in debt on a bond by the ſurviving executor of the obligee, 238
12. Declaration in debt on a bond againſt the executrix of the obligor, 239
13. Declaration in debt on a bond againſt the two executors of the obligor, 240
14. Declaration in debt on a bond by the adminiſtrator of the obligee, 242
15. Declaration in debt on ſeveral bonds by the adminiſtratrix of the obligee, 244
16. Declaration in debt on a bond by baron and feme adminiſtratrix of the obligee, 247
17. Declaration in debt on a bond by an adminiſtrator of the obligee *durante minori ætate*, *&c.* (where there

there had been a former adminiſtrator *durante minori ætate)* againſt the executrix of the obligor, *p.* 252

18. Declaration in debt on a bond by the adminiſtrator *de bonis non adminiſtratis* by a late executrix of the obligee, againſt baron and feme obligor, the bond being entered into by the feme whilſt ſhe was ſole, 254

19. Declaration in debt on a bond by an adminiſtrator *de bonis non adminiſtratis* by a late adminiſtrator of the obligee, 256

20. Declaration in debt on a bond in *B. R.* by the executor of the obligee againſt the heir of the obligor, 258

21. Declaration in debt on a bond againſt the heir of the obligor, 261

22. Declaration in debt on a bond by baron and feme executrix of the obligee, againſt the heir of the heir and deviſee of the obligor, on a bond made in 1681, and ſued in 1718, 265

23. Declaration in debt on a bill penal, payable at ſeveral times by the obligee againſt baron and feme adminiſtratrix of the obligor, 268

24. Declaration on a bail-bond againſt an attorney *B. R.* *page* 277

25. Declaration in debt on a bail-bond by the aſſignee of the ſheriff againſt one of the bail, 282

26. Declaration in debt on a bail-bond by two aſſignees of the ſheriff againſt one of the bail, 286

27. Declaration in debt on a bail-bond by two aſſignees of the ſheriff againſt the principal, 289

28. Debt on a bail-bond by the aſſignee of the ſheriff againſt one of the bail, 293

29. Declaration in debt on a leaſe for years againſt the executor of the leſſee for rent due in the teſtator's time, and alſo in the executor's time, 300

30. Declaration in debt on a promiſſory note and a *mutuatus*, 307

31. Declaration in debt on *ſtat.* 9 *Ann.* for preventing exceſſive and deceitful gaming, 309

32. Declaration in debt for 5 *l.* penalty on *ſtat.* 28 *Geo.* 2. *c.* 17. for preſervation of the publick highways, 310

33. Declaration in debt on a judgment after verdict, 311

34. Declaration in debt for damages and coſts on a judgment in ejectment in *C. B.* in *Ireland*, for the coſts

costs in error in *B. R.* there, and the costs in error in *B. R.* here, costs on the judgment, 312
35. Plea, 315
36. Replication, 317
37. Joinder in demurrer, 318
38. Declaration in debt on a bond contained in a deed for performance of an agreement in that deed, 319
39. Declaration in debt on the *ſtat.* 21 *Hen.* 8. *c.* 13. for non-reſidence, 322
40. Declaration in debt for rent, 323
41. Plea, 325
42. Replication, 325
43. Rejoinder, a prior judgment in *Scac.* recovered by two ſtrangers againſt defendant's anceſtor, 330
44. Surrejoinder, that the judgment was obtained *per fraudem*, 337
45. Rebutter, 337
46. Surrebutter maintains the ſurrejoinder, 338
47. Declaration in debt by baron and feme executrix, for rent due after teſtator's death, 338
48. Declaration in debt, upon an award, 341

Dedimus poteſtatem.

1. *Dedimus poteſtatem* to aſſign a guardian, 569

Demiſe le roy.

1. *Demiſe le roy*, 23, 84, 360, 470

Demurrer.

1. Demurrer to a replication and joinder, 22, 75
2. Demurrer to a declaration againſt the marſhal for an eſcape, 94
3. Demurrer to the firſt count, and *non aſſumpſit* to the ſecond, 148
4. Demurrer to a plea in abatement, and joinder, 4, 24
5. Demurrer to a plea in bar, 70
6. Demurrer to a declaration, and joinder, 60

Devaſtavit.

1. *Devaſtavit* ſuggeſted, 231 534

Deviſee.

1. Declaration in debt on a bond by baron and feme executrix of the obligee againſt the heir of the heir and deviſee of the obligor, 265

Diſtringas.

1. A *diſtringas* in ejectment by original for a trial at bar, 539
2. *Diſtringas* awarded on an iſſue in error, 410

Ejectment.

1. Rule by conſent in ejectment by original, 350, 438

Elegit.

1. Award of *elegit*, 541

Error.

1. Entry of a writ of error on a judgment in *C. B.* 351
The writ of error, 351
The return, 352
2. Writ of error *coram nobis reſiden'*. 355
Superſeded for non-proſecution, 356
Another writ brought, 356
Error aſſigned, that the defendant appeared by attorney, and was under age, 357
Sci. fa. ad audiendum record, &c. 357
Return *nihil*, 358
Alias ſci. fa. 359
Return *nihil*, 358
Defendant in error appears, 358
Rejoinder that plaintiff was of age, 359
Iſſue and *venire*, 359
Proceſs continued, 360
Demiſe le roy, 360
Niſi prius, 360
Poſtea, 360
Tales, 360
Plaintiff nonſuited, 361
Judgment, 361
Another writ of error brought, 361
Errors aſſigned as before, 362
Sci. fa. 363
Return *nihil*, 363
Alias ſci. fa. 363
Return *nihil*, 363
Continuance, 364
3. Error *coram nobis* brought, 364
Allowed, 365
Error aſſigned, 365
Sci. fa. prayed, 366
Vic. non miſit breve, 367
Alias ſci. fa. 367
Vic. non miſit breve, 367
Plu. ſci. fa. 367
Vic. non miſit breve, 368
Plu. ſci. fa. 368
Defendant in error appears, 368
Iſſue, 369
Venire facias, 369
Vic. non miſit breve, 369
Alias ven. fac. 369
Vic. non miſit breve, 369
Plu. ven. fac. 369

Returned executed, *p.* 370
Jury make default, 370
Diſtringas jur. 370
Le ſciendum, 371
The poſtea, 371
Verdict, 371
Continuance, 372
4. Entry of a writ of error returned in the *Exchequer* on a judgment in *B. R.* 373
Return and tranſcript, it being an action againſt four defendants, judgment by *nil dicit* againſt one defendant, verdict againſt two defendants, and verdict againſt plaintiff for the other defendant, 397
Only one of the plaintiffs in error appears, who prays a *ſci. fa.* againſt the other two, 393
Who, on a return *ſcire feci*, make default, 395
Judgment that he proſecute alone, 395
General errors aſſigned, 395
Rejoinder, 396
5. Aſſignment of errors in *B. R.* 404
No warrant of attorney, 405
Nor original, 405
6. Entry of a writ of error in the *Exchequer-chamber*, 373
The return and tranſcript, 376
Day given to aſſign errors, *page* 380
General errors aſſigned, 381
Scire facias ad audiendum errores awarded, 381
The party appears, 382
Vic' non miſit breve, 382
Joinder in error, 382
Continuance by *cur' adviſare vult*, 382
Warrant of attorney for plaintiff, 382
——— for defendant, 383
Judgment affirmed, 383
Coſts *occaſione dilationis executionis*, 384
Record remitted, 384
7. Entry of a writ of error returned in the *Exchequer-chamber* on a judgment given in *B. R.* 386
8. Error aſſigned in parliament, 396
9. The like, 397
10. Error aſſigned on a judgment, and affirmance of that judgment in *Ireland*, 398
11. Error aſſigned in a judgment in *C. B.* rejoinder, 399
12. Error aſſigned in a judgment in *C. B.* 400
No warrant of attorney. *Certiorari* prayed, awarded and returned, 400, 401
Warrant of attorney, 402
In nullo eſt errat' 402
Judgment reverſed, 403

13. A *nisi prius* record on an issue joined in error, *p.* 407
Error assigned in *B. R.* 408
Death of one of the defendants before verdict, 408
Award of *scire facias ad audiendum errores*, 409
Vic' non misit breve, 409
Defendant appears and pleads, that the other defendant is living, 409
Replication, 409
Venire awarded, 410
Distringas awarded, 410
14. Entry of a writ of error to *B. R.* in *Ireland* on reversal of a judgment in ejectment given in *C. B.* there, 411
The return, 413
Assignment of error in *B. R.* in *England* on a judgment given for the plaintiff in *C. B.* in *Ireland*, and reversed in *B. R.* there, 413
Rejoinder in error, 414
15. Assignment of error in *B. R.* 419
16. *Certiorari* in error to C. J. *K. B.* to return a bill, 415
The return, 416
17. *Certiorari* to the chief justice *C. B.* to certify warrant of attorney, 416
The return, 417
18. *Certiorari* to the *custos brevium* to return an attachment of privilege, *page* 418
19. The form of taking a recognizance of bail in error *coram nobis*, 419
20. Judgment affirmed in *B. R.* 420
21. Entry of the record transmitted into the *Exchequer-chamber*, errors assigned, 421
22. Affirmance of a judgment in the *Exchequer-chamber*, 422
Remittitur, 422
23. *Scire facias ad audiendum errores* awarded, 423
The party appears, and the plaintiff alledges the errors before assigned, 423
The defendant says the plaintiff was of full age, 424
Venire awarded, 424
Distringas awarded, 425
Le sciendum, 425
24. Writ of error to the *Exchequer* in *Ireland*, 425
25. Plea to a *scire facias quare executionem non*, that there are not 15 days between the teste and return of the writ, 24

Executors.

Declarations for them.

1. Declaration in debt on a bond by the surviving executor of the obligee, 238

2. Declaration in debt on a bond in *B. R.* by the executor of the obligee againſt the heir of the obligor, *page* 238
3. Declaration in debt on a bond by baron and feme, executrix of the obligee, againſt the heir of the heir and deviſee of the obligor, 265
4. Declaration in account by a merchant's executors againſt his factor as bailiff, 46

Declarations againſt them.

1. Declaration in debt on a judgment (recovered againſt the defendant as executrix) ſuggeſting a *devaſtavit*, 230
2. Declaration in debt on a bond by the ſurviving obligee againſt the executor of the obligor, 236
3. Declaration in debt on a bond againſt the executrix of the obligor, 239
4. Declaration in debt on a bond againſt two executors of the obligor, and judgment of aſſets *in futuro*, 240
5. Declaration in debt on a bond by the adminiſtrator of the obligee *durante minori ætate*, &c. (when there had been a former adminiſtrator *durante minori ætate*) againſt the executrix of the obligor, *page* 252
6. Declaration in debt on a leaſe for years againſt the executor of the leſſee, for rent due in the teſtator's time, and alſo in the executor's time, 300
7. Declaration in caſe *ſur aſſumpſit* againſt an executrix for money had and received by the teſtator, 116, 160
Money laid out, 117, 160
Inſimul comput. plaintiff and teſtator, 117
8. Declaration *ſur aſſumpſit* againſt an executrix for money lent to the teſtator, 116
9. Declaration in caſe *ſur aſſumpſit* againſt baron and feme executrix; a ſum of money being lodged in the teſtator's hands to be paid to the plaintiff upon a contingency, he promiſed to pay the ſame accordingly, 122

Executors and adminiſtrators.

Pleas by them.

1. Plea by baron and feme adminiſtratrix; a judgment in *C. B.* recovered againſt the inteſtate in debt *ſur mutuatus*; a judgment recovered againſt the defendant on a bond due from inteſ-

inteſtate. *Plene adminiſtravit.* Have not goods but to value of 10 *l.* liable to the judgments; replication judgments kept on foot *per fraudem*, and aſſets *ultra*; demurrer and joinder, 270

2. Plea by an executrix, a bond entered into by the teſtator, the condition, and what really due thereon; another bond, the condition, and what really due; articles entered into by the teſtator with a maſter of one of his ſhips, with a penalty of 500 *l.* that teſtator has not performed the articles, and what due thereon; a judgment recovered againſt her as executrix by the indorſee of a foreign bill of exchange drawn on and accepted by teſtator; *plene adminiſtravit*, except 1000 *l.* liable as above. Replication, aſſets *ultra*, 161, 177

Habere facias poſſeſſionem.

1. An *habere facias poſſeſſionem* in *B. R.* 563
2. An *habere facias poſſeſſionem* on a double demiſe, 564

Heir.

1. Declaration in debt on a bond in *B. R.* by the executor of the obligee againſt the heir of the obligor, *page* 258
2. Declaration in debt on a bond againſt the heir of the obligor, 261
3. Declaration in debt on a bond by baron and feme, executrix of the obligee againſt the heir and deviſee of the obligor, 265

Imparlance.

1. Imparlance, 61, 126, 148, 208, 232, 235, 249, 259, 469, 496-9
2. Special imparlance after a plea, 6
3. Same continued, 7
4. Special imparlance, 23
5. After a demurrer, 61

Impriſonment.

See *Treſpaſs.*

Infant.

1. Plaintiff admitted to ſue by *prochien amy*, 461

Inquiry.

1. Inquiry awarded and returned, 151
2. Inquiry awarded and returned on a *non-proſs* in replevin, 472

Inſimul computaſſ.

1. *Inſimul computaſſ.* plaintiff and teſtator, 117

Judgments.

1. Judgment as in caſe of a nonſuit purſuant to the late ſtatute, for that plaintiff did not proceed to trial in due time, 427
2. Non-proſs for default of declaring, 528
3. Judgments of aſſets *in futuro*, 241
4. *Cognovit actionem, ſed riens per deſcent præter* four meſſuages, *&c.* and the reverſions of, *&c.* judgment for the tenements confeſſed, and the reverſions *quando acciderint*, 265
5. Judgment for the plaintiff on a demurrer to a declaration in caſe, 151
6. Judgment by *non poteſt dedicere*, 355
7. Judgment on a verdict for the plaintiff in treſpaſs, aſſault and impriſonment, 380
8. Judgment againſt baron and feme executrix, by default of a *ſcire facias* inquiry, 538
9. Judgment for a defendant on a *non-proſs* in replevin; inquiry awarded, returned, and final judgment, *page* 472
10. Judgment *quod reſpondeat ouſter* on a demurrer to a plea in abatement, 6
11. Judgment in debt by *nil dicit*, with an imparlance, 429
12. Judgment by *nil dicit*, 430
13. Judgment by *nil dicit* againſt a priſoner, with an imparlance, 430
14. Judgment in ejectment after verdict for the plaintiff, 431
15. Judgment againſt baron and feme, adminiſtratrix in caſe, 431
16. Judgment in debt by *relicta verificatione*, 431
17. Judgment for the plaintiff in treſpaſs and aſſault, where upon inſpection of the wound the court aſſeſſed damage over and above the damages aſſeſſed by the jury, 432
18. Judgment in debt on the *ſtat. Edw.* 6. for not ſetting out tithes, part for the plaintiff, part for the defendant, 433
19. Judgment in debt for the plaintiff on a demurrer in abatement to a declaration, 434
20. Judgment for the plaintiff for coſts 8 *l.* ſtamp upon the paper book, 11th *Feb.* 1741, 434
21. Judg-

21. Judgment in debt for the plaintiff on a demurrer to a plea in bar to a *ſcire facias* againſt an executor, *page* 434
22. Judgment on a verdict for a defendant, 435
23. Judgment in ejectment, part for the plaintiff, and part for the defendant, 436
24. Judgment in debt, part for the plaintiff, and part for the defendant, 436
25. Judgment in aſſault, part for the plaintiff, and part for the defendant, 437
26. Judgment in ejectment for the plaintiff as to the ſecond demiſe, and for the defendant as to the firſt and third demiſe, 437
27. Judgments affirmed or reverſed, 403, 420, 422
28. Judgment for defendant in error, plaintiff in error being nonſuited at *niſi prius*, 361
29. Judgment in treſpaſs by *nil dicit* againſt one defendant where three other defendants plead Not guilty, and the plaintiff had a verdict againſt two of them, and the third had a verdict againſt the plaintiff, 392
30. Judgment for plaintiff in debt againſt an executrix on a demurrer to a replication to a plea in bar, 77
31. Judgment by *nil dicit* in partition, *page* 576, 577
32. Judgment on a *ſci. fa.* againſt tertenants, where two are returned tenants, one making default, and the other pleads to iſſue, 442
33. Judgment of *reſpondeas ouſter* on a demurrer to a plea in abatement in caſe, 444
34. Judgment of *reſpondeas ouſter* on a replication on a plea in abatement, 444
35. Judgment of *non-proſs* for not proceeding to trial, 445
36. Judgment of repleader after verdict for the plaintiff, 445
37. *Nolle proſequi* after verdict as to two defendants, 446

Jurata.

1. The *jurata*, 236, 465

Le ſciendum.

1. *Le ſciendum*, 371, 425, 468

Liberum tenementum.

1. *Liberum tenementum alterius*, by whoſe order defendant entered, &c. 501

Memorandum.

1. Of a declaration of the ſame term, *page* 129, 148, 297, 352, 388, 491, 498, 499, 507
2. Of a declaration of the precedent term, 119, 144, 227, 230, 234, 247, 503, 516
3. Of a declaration of a particular day in the precedent term, 205, 230
4. *Memorandum* of a plaint in replevin in the county court removed by *recordari* into *B. R.* 458

Mittimus.

1. To a county palatine, 498
2. An award of a *mittimus* to the juſtices in the county palatine of *Lancaſter* to try an iſſue joined in *B. R.* 566
3. The *mittimus*, 567
4. Entry of a *mittimus* of a writ of *dedimus poteſtatem* to admit a guardian for one of the defendants, being an infant, and the return, *&c.* 568
5. The *mittimus*, 568

Money brought into court.

1. Money brought into court in covenant for rent, 204

Nil dicit.

See *Judgment.*

Niſi prius.

1. A *niſi prius* record in *B. R.* 234
2. A *niſi prius* record in replevin in *B. R.* 463
3. A *niſi prius* record on an iſſue joined in error, 407

Nolle proſequi.

1. As to one count, 150
2. After verdict as to two defendants, 446

Non aſſumpſit.

1. Special *non aſſumpſit*, 126
2. *Non aſſumpſit* as to part, and a tender as to the reſidue, 79
3. *Non aſſumpſit* to the ſecond count, and demurrer to the firſt, 149

Non aſſumpſit infra ſex annos.

1. Replication a bill of *Middleſex* ſued out and continued by *vic' non miſit breve*, to the time of the defendant's appearance; re-

rejoinder *nul tiel record*, *page* 81
2. Surrejoinder *habetur tale record'*, 86
3. *Non aſſumpſit infra ſex annos*, and a ſet-off, 87
4. Replication, 89

Non eſt factum.

1. *Non eſt factum*, 240
2. *Non eſt factum teſtatoris*, 240
3. Bond interlined after it was executed, and *ſic non eſt factum.* 299

Non-proſs.

1. *Non-proſs* in replevin, 466
2. *Non-proſs* for default of declaring, 528

Not guilty.

1. Not guilty in treſpaſs and aſſault, 378, 390
2. Not guilty in treſpaſs, 521
3. Not guilty as to part, and juſtification as to the reſidue, 493

Notice.

1. To an attorney of a bill filed againſt him, 593

Nul tiel record.

1. Plea of *nul tiel record*, and replication, *page* 232
2. Rejoinder of *nul tiel record*, and ſurrejoinder, 86
3. Replication *nul tiel record*, and rejoinder, 21, 23

Outlawry.

1. Outlawry reverſed, 542

Oyer.

1. Oyer of a bond and the condition, 249, 266

Partition.

1. Declaration in partition, 571
2. Judgment by *nil dicit*, 578
3. Writ to the ſheriff to make partition, 579
4. Return, 580

Plea.

See *Abatement.*
Accompt.
Bar.
Avowry.
Conuſance.

Plene Adminiſtravit.

1. Specially pleaded, 162 to 184, 270 to 275

Poſtea.

1. *Poſtea*, ſpecial verdict in ejectment, *page* 447

See *Verdict.*

Priſoner.

1. Declaration againſt a priſoner in the cuſtody of a bailiff of a liberty, 29

Privilege.

See *Superſedeas.*

Recital.

1. Of a writ of election, 215
2. And the ſheriff's precept, 217
3. Of a leaſe, 197, 300
4. Of articles of apprenticeſhip, 120, 301
5. Of a leaſe and releaſe, 510
6. Of a declaration, 19

Recognizance.

1. Entry of recognizance of bail, 543
2. Recognizance of bail in *audita querela*, 592
3. Recognizance of bail in error *cor' nobis reſiden'*, 419

Rejoinder.

1. Umpirage not ready to be delivered, 348

Relicta verificatione.

1. Judgment in debt by *relicta verificatione*, 431

Replevin.

1. Declaration in replevin *B. R.* 453, 455, 463
2. *Non-proſs* in replevin, 468
3. Suggeſtion *pur return' habend'*, 468
4. Avowry for rent arrear, replication, no rent arrear, 453, 454
5. Avowry for ſalvage, replication *de injuria ſua propria*, 459, 461
6. Conuſance a diſtreſs for a poor's rate; replication *de injuria ſua propria*, 456, 457
7. Property in a ſtranger pleaded in bar, 463
   Replication, 464
8. Conuſance as bailiff for rent arrear, 468
9. Conuſance as bailiff for rent-ſervice; replication not

not ſeiſed of the rent; bar, was ſeiſed of the rent, *page* 473

Replication.

1. No performance of award, 346
2. Umpirage ready to be delivered, 347
3. No tender of award, 349

Reſpondeas ouſter.

1. Judgment *quod reſpondeas ouſter*, 6

Riens per diſcent.

1. *Riens per diſcent tempore exhibitionis billæ*, 259
2. *Cognovit actionem & riens per diſcent præter*, 262

Satisfaction.

1. A ſatisfaction-piece on a judgment affirmed in error, 593

Scire facias.

1. *Scire facias ad audiendum errores* awarded in the *Exchequer-chamber*, 409
2. *Scire facias ad audiendum errores* awarded in *B. R.* 357, 363
3. *Scire facias quare executionem non*, &c. on a judgment in an inferior court removed by writ of error, *page* 580, 584
4. Entry of *ſci. fa. ſur judicium poſt annum et diem*, 582
5. *Scire facias quare executionem non* after error brought in dower, 475
6. *Scire facias quare execut. non* after error on a judgment in the palace court, 477
7. Entry of a *ſcire facias* inq. againſt executors, 478
8. *Scire facias* againſt executors on a judgment againſt teſtator, 485
9. *Scire facias quare execut. non*, &c. on a judgment in an inferior court removed by writ of error, 490

Scire facias and inquiry.

1. Entry of a *ſcire facias* and inquiry againſt baron and feme executrix, after a *teſtatum fi. fa.* returned *nulla bona teſtatoris*, and coſts levied *de bonis propriis*; *devaſtavit* ſuggeſted, 523

Nulla bona, inquiſition and *devaſtavit* found, and *nihil* returned to the *ſci. fa.* 536

Alias ſci. fa. awarded, *nihil* returned, and judgment thereon, *page* 537

Solvit ad diem.

1. *Solvit ad diem*, 80
2. Payment to a bond according to the ſtatute, 80, 250

Son aſſault.

1. *Son aſſault demeſne*, 78

Superſedeas.

1. *Superſedeas* for one of the clerks of the chief clerk not to bear arms or ſerve as a ſoldier, 585
2. For an attorney *B. R.* to a ſuit againſt him in the mayor's court, *London*, 584
3. For a clerk of the chief clerk and his ſervant to the judges of the *Common Pleas* to ſtay a ſuit againſt him there in a plea of treſpaſs, 588
4. For the under-ſheriff of *Middleſex* as an officer *B. R.* directed to the judges *C. B.* upon an action commenced by a clerk of the *exigents* in *C. B.* againſt the under-ſheriff, 590

Treſpaſs.

1. Declaration in treſpaſs, aſſault and impriſonment, by a maſter carpenter of the office of ordnance againſt the governor of *Gibraltar*, for impriſoning the plaintiff, and cauſing him to be tried by a court martial there, to which not ſubject to undergo the ſentence thereof, and, *viz.* to receive 300 laſhes, and to leave the place and his employment, 377
2. For aſſaulting the plaintiff's wife, raviſhing, debauching, lying with, and carnally knowing her, 489
3. For raviſhing, debauching, lying with, and carnally knowing the plaintiff's wife, 498
4. For entering plaintiff's cloſe, conſuming the graſs with cattle, and cutting down two oaks and carrying away the timber, 499
5. For aſſault and battery on an infant, 504
6. For entering plaintiff's cloſe, and cutting and carrying away the reeds, 508
7. Declaration in treſpaſs for entering the plaintiff's hop-gardens, pulling down the hop-poles, and cutting the hop-binds, 516

8. Of declaring in treſpaſs on a plaint removed out of the county court, becauſe the defendant pleaded *liberum tenementum*, *page* 518
9. Declaration in treſpaſs, aſſault and impriſonment, againſt four defendants, 389
10. Declaration in treſpaſs removed by *re. fa. lo.* to have coſts where the damages in the plaint are under 40 *s.* 518
11. Treſpaſs for entering a houſe, 519
12. For an aſſault, 522
13. Declaration in treſpaſs, aſſault, and impriſonment, 521, 524
14. Declaration in treſpaſs for a criminal converſation with the plaintiff's wife, 529
15. Declaration in treſpaſs, *clauſum fregit*, treading down the graſs, and cutting down and carrying away trees, 530

Venire facias.

1. *Venire* awarded in *B. R.* by original in replevin; *vic' non miſit breve*, and *venire* awarded *de novo*, 455, 462
2. *Venire* awarded in *B. R.* by original in replevin, ſuggeſtion the death of one of the parties, *vic' non miſit breve*, *alias venire* awarded, *page* 462
3. *Venire* awarded to try two iſſues, 496, 515
4. *Venire* awarded *tam ad triand' quam ad inquirend'*, 150, 390
5. *Venire* awarded to the coroners, 179
6. A *venire facias* in ejectment by original for a trial at bar, 538

Verdict.

1. Special verdict, 181
2. Rule for judgment on the ſpecial verdict, 185
3. Verdict for plaintiff in error, that he was under age, 371
4. For the plaintiff in treſpaſs, aſſault and impriſonment, 380
5. Verdict on a trial at bar upon ſeveral iſſues, 439
6. Verdict for the plaintiff on a trial at bar, with a *decem tales*, 440
7. In treſpaſs againſt two defendants and againſt plaintiff as to a third defendant, 392

Unica taxatio.

1. *Unica taxatio*, 390

Warrants of attorney.

1. Warrant of attorney for the plaintiff in treſpaſs, aſſault and impriſonment, *page* 376, 388
2. Warrant of attorney for the defendant, 376, 388
3. Warrant of attorney for the plaintiff in error in the *Exchequer-chamber*, 411
4. Warrant of attorney for the defendant, 411
5. Warrant of attorney for baron and feme executrix againſt an executrix in debt, 402
6. Warrant of attorney for the plaintiff in error in *B. R.* *page* 411
7. Warrant of attorney for the defendant, 411
8. Plaintiff admitted to ſue by *prochein amy*, 503
9. Warrant of attorney for defendant, 503

Withernam.

1. *Capias* in *withernam* upon a *return' habend'* after a plea of property in a ſtranger, 559

FINIS.